

# Constitution of Institute of Public Works Engineering Australasia Limited

Australian Business Number (ABN: 42 087 934 898)

A company limited by guarantee

## Contents

|                                                      |    |
|------------------------------------------------------|----|
| Preliminary .....                                    | 3  |
| Charitable purposes and powers .....                 | 3  |
| Members .....                                        | 4  |
| Dispute resolution and disciplinary procedures ..... | 8  |
| General Meetings of members .....                    | 10 |
| Members' resolutions and statements.....             | 14 |
| Voting at General Meetings.....                      | 15 |
| Directors .....                                      | 17 |
| Powers of directors.....                             | 19 |
| Duties of directors.....                             | 20 |
| Directors' meetings.....                             | 22 |
| Divisions and Branches .....                         | 23 |
| Secretary .....                                      | 28 |
| Minutes and records.....                             | 28 |
| Notice.....                                          | 29 |
| Financial matters.....                               | 30 |
| Indemnity, insurance and access.....                 | 30 |
| Winding up .....                                     | 31 |
| Definitions and interpretation .....                 | 32 |

## Preliminary

### 1. Name of the Company

- 1.1 The name of the Company is Institute of Public Works Engineering Australasia Limited (the Company).

### 2. Type of Company

- 2.1 The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

### 3. Liability of members limited to the guarantee

- 3.1 Each member must contribute an amount not more than \$10 (the guarantee) to the property of the Company if the Company is wound up:
- (a) while the member is a member, or within 12 months after they stop being a member; and
  - (b) at the time of winding up, the debts and liabilities of the Company, including the costs of winding up, incurred before the member stopped being a member exceed the Company's assets.
- 3.2 The liability of each member is limited to the amount of the guarantee.

## Charitable purposes and powers

### 4. Object

- 4.1 The Company's object is to enhance the quality of life of the communities in the jurisdictions where it operates through the application of continuous improvement and best practice principles to all aspects of public works and services.
- 4.2 The Company will achieve this Object by:
- (a) promoting excellence in the delivery of public works and services, in part by providing support and leadership to persons involved in the industry;
  - (b) advancing public works and services issues and promoting the Company (including its particular State Divisions and Special Divisions) IPWEA Group as a principal source of credible, authoritative advice on all public works and services matters;
  - (c) being a peak or leading body representing all persons involved in the planning and provision of public works and services in Australia and New Zealand;
  - (d) developing and exchanging ideas, information and technology in the science and practice of all aspects of public works, including between different industry associations;
  - (e) fostering the personal and professional growth of all persons involved in the delivery of public works and services, including by encouraging them to become members of an appropriate Division;
  - (f) representing the communities in which it operates; and
  - (g) anything ancillary to the Object.

## **5. Powers**

- 5.1 Subject to clause 6, the Company has all the powers of a company limited by guarantee under the Corporations Act which may only be used to carry out its purpose(s) set out in clause 4.

## **6. Not-for-profit**

- 6.1 The Company must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 6.2 and 71.
- 6.2 Clause 6.1 does not stop the Company from doing the following things, provided they are done in good faith:
- (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company, or
  - (b) making a payment to a member in carrying out the Company's charitable purpose(s).
- 6.3 No shares shall be issued to any person unless that person is a registered charity or trustee who holds those shares in trust for charitable purposes as defined in the Act.

## **7. Amending the constitution**

- 7.1 Subject to clauses 7.3 and 7.4, the members may amend this constitution by passing a Special Resolution.
- 7.2 Any amendment to this constitution will take effect from the date of the Special Resolution, or from any later date specified in the resolution.
- 7.3 The members must not pass a Special Resolution that amends this constitution if passing it would mean the Company would no longer be a charity in Australia, New Zealand or both.
- 7.4 A resolution that varies the rights in clauses 55 to 57 or otherwise varies this Constitution where that amendment is or may be detrimental to the rights of a Division, unless the variation has also been approved by a Special Resolution of the members of each affected Division.

# **Members**

## **8. Membership and register of members**

- 8.1 The members of the Company are those:
- (a) included as such on the application for incorporation of the Company with their consent, and
  - (b) any other person that the directors allow to be a member, in accordance with this constitution,
- and have not since ceased to be a member.
- 8.2 The Company must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:

- (a) for each current member:
  - i. name
  - ii. address
  - iii. any alternative address nominated by the member for the service of notices, and
  - iv. date the member was entered on to the register
- (b) for each person who stopped being a member in the last 7 years:
  - i. name
  - ii. address
  - iii. any alternative address nominated by the member for the service of notices, and
  - iv. dates the membership started and ended

8.3 The Company must allow members to inspect the register of members.

8.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

## **9. Who can be a member**

9.1 A person who supports the purposes of the Company is eligible to apply to be a member of the Company under clause 10.

9.2 In clauses 8 to 15, 'person' means an individual or incorporated body.

9.3 Subject to Clause 9.4:

- (a) if there is a Branch in the State or Territory in which a member resides, that member will automatically become a member of the Branch on admission as a member of the Company;
- (b) if there is a State Division Members of the Company must, if there is a State Division in the State or Territory in which the member resides, that member must be a member of that State Division to be eligible to be a member of the Company; and
- (c) if there is no Branch or State Division in the State or Territory in which the member resides, that member is eligible to be a member of the Company and may, with the consent of the Company, but does not have to:
  - i. be a member of another State Division in another State or Territory;
  - ii. be a member of a Special Division in any State or Territory, in the Commonwealth of Australia or in any other part of the world.

9.4 If a Member is already a member of a State Division or a Special Division when a Branch is established or that Member is eligible to be a member of both a Branch and a State Division, that Member must nominate the Division of which they or them wishes to be a member. The nomination must be provided to the Secretary in writing on request and the Member may amend such nomination at any time without affecting his or her continuity of membership.

## **10. How to apply to become a member**

- 10.1 A person may apply to become a member of the Company by writing to the secretary stating that they:
- (a) want to become a member
  - (b) support the purpose(s) of the Company, and
  - (c) agree to comply with the Company's constitution, including paying the guarantee under clause 4 if required.

## **11. Directors decide whether to approve membership**

- 11.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application.
- 11.2 Other than the entitlement to be a member of a Division, the grades or classes of membership of the Company and the qualifications or criteria for membership of each grade or class including membership fees shall be such as the directors from time to time prescribe based on the resolution of the Board.
- 11.3 If the directors approve an application, the secretary must as soon as possible:
- (a) enter the new member on the register of members, and
  - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 12).
- 11.4 If the directors reject an application:
- (a) the secretary must write to the applicant as soon as possible to tell them that their application has been rejected.
  - (b) the directors do not have to give reasons.
- 11.5 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 10(a), 10(b) or 10(c). In that case, by applying to be a member, the applicant agrees to those three matters.
- 11.6 The directors may appoint a Membership Committee which shall operate as a sub-committee in accordance with this Constitution.
- 11.7 All other matters concerning the membership of the Company, including membership fees, shall be under the control of the Board or the Membership Committee who shall be responsible for administration of the membership of the Company including the procedure for applying for membership or renewal of membership and the collection of membership fees, the acceptance or otherwise of applications for membership or renewal of membership and the notification of applicants of the acceptance or otherwise of applications for membership or renewal of membership.
- 11.8 The Board or the Membership Committee may delegate its powers in respect of the processing of applications for membership or renewal of membership, the collection of membership fees, the acceptance or otherwise of applications for membership or renewal of membership of the Company, the

notification of applicants of the acceptance or otherwise of applications for membership or renewal of membership and any other powers it is authorised by the directors to delegate to the a State Divisions or Special Divisions such delegation to be on such terms as the Board or Membership Committee thinks fit, save that any delegation to a Division must be limited to dealing with matters relating to that Division's members. Any membership fees collected by a Division on behalf of the Company shall be remitted in full to the Company within six (6) months of receipt.

- 11.9 The directors may at their own initiative or on the recommendations of the Board or the Membership Committee contract out any aspect of the administration of the membership of the Company under the control of the Board or the Membership Committee on such terms as they think fit.
- 11.10 The Board or the Membership Committee may accept a delegation of power from a Division on such terms as it thinks fit in respect of the processing of applications for membership or renewal of membership, the collection of membership fees, the acceptance or otherwise of applications for membership or renewal of membership of the respective Divisions the notification of applicants of the acceptance or otherwise of applications for membership or renewal of membership and any other powers it is authorised by the directors to accept from the Divisions. Any membership fees collected by the Company on behalf of a Division shall be remitted in full to the State Division or Special Division within one (1) month of receipt.
- 11.11 All applicants for membership of the Company shall be given written notification forthwith of the acceptance or otherwise of his/her application provided that the Company, its directors, Membership Committee or delegate shall not be required to give reasons for the non-acceptance of any application. Upon payment of his/her membership fees the applicant shall become a member of the Company provided nevertheless that if such fees are not paid within 2 months after the date of the notice, the Board or the Membership Committee or its delegate may in its discretion cancel its acceptance of the application for membership of the Company.

## **12. When a person becomes a member**

- 12.1 An applicant will become a member when they are entered on the register of members.

## **13. Membership fees**

- 13.1 Each member must pay a joining fee and an annual membership fee, unless the directors decide otherwise.
- 13.2 Unless the directors decide otherwise, the joining fee and the annual membership fee are as set out on its website as updated from time to time. A member that has not paid the required membership fee in accordance with this clause may not exercise any of the rights associated with that member's membership, including the right to exercise any vote the member may have at a meeting of members.

#### **14. Transfer of membership**

- 14.1 Membership of the Company and the associated rights cannot be transferred or sold.

#### **15. When a person stops being a member**

- 15.1 A person immediately stops being a Member if they:
- (a) die;
  - (b) fails to pay any required membership fee in accordance with cl 13 within one month after the date on which that membership fee becomes due or such later time as the directors may determine;
  - (c) are wound up or otherwise dissolved or deregistered (for an incorporated member);
  - (d) resign, by writing to the secretary;
  - (e) are expelled under clause 17; or
  - (f) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a Member.

### **Dispute resolution and disciplinary procedures**

#### **16. Dispute resolution**

- 16.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
- (a) one or more members
  - (b) one or more directors, or
  - (c) the Company.
- 16.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 17 until the disciplinary procedure is completed.
- 16.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it, or within a timeframe agreed by those involved.
- 16.4 If those involved in the dispute do not resolve it under clause 16.3, they must within 10 days (or within a timeframe agreed by those involved):
- (a) tell the directors about the dispute in writing
  - (b) agree or request that a mediator be appointed, and
  - (c) attempt in good faith to settle the dispute by mediation.
- 16.5 The mediator must:
- (a) be chosen by agreement of those involved, or
  - (b) where those involved do not agree:
    - i. for disputes between members, a person chosen by the directors, or



- ii. for other disputes, a person chosen by the president of the law institute or society in the state or territory in which the Company has its registered office.

- 16.6 A mediator chosen by the directors under clause 16.5(b)(i):
- (a) may be a member or former member of the Company
  - (b) must not have a personal interest in the dispute, and
  - (c) must not be biased towards or against anyone involved in the dispute.
- 16.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard
  - (b) allow those involved a reasonable chance to review any written statements
  - (c) ensure that the mediation is conducted in a manner free from bias, and
  - (d) not make a decision on the dispute.

### **17. Disciplining members**

- 17.1 In accordance with this clause, the directors may resolve to warn, suspend, or expel a member from the Company if the directors consider that:
- (a) the member has breached this constitution, or
  - (b) the member's behaviour is causing, has caused, or is likely to cause harm to the Company.
- 17.2 At least 14 days before the directors' meeting at which a resolution under clause 17.1 will be considered, the secretary must notify the member in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the member
  - (b) that this resolution will be considered at a directors' meeting and the date of that meeting
  - (c) what the member is said to have done or not done
  - (d) the nature of the resolution that has been proposed, and
  - (e) that the member may provide an explanation to the directors, and details of how to do so.
- 17.3 Before the directors pass any resolution under clause 17.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the directors a written explanation before that directors' meeting, and/or
  - (b) speaking at the meeting.
- 17.4 After considering any explanation under clause 17.3, the directors may:
- (a) take no further action
  - (b) warn the member

- (c) suspend the member's rights as a member for a period of no more than 12 months
  - (d) expel the member
  - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or
  - (f) require the matter to be determined at a General Meeting.
- 17.5 The directors cannot fine a member.
- 17.6 The secretary must give written notice to the member of the decision under clause 17.4 as soon as possible.
- 17.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 17.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

## General Meetings of members

### 18. Calling General Meeting

- 18.1 The directors may call a General Meeting.
- 18.2 If members with at least 5% of the votes that may be cast at a General Meeting or in respect of a Special General Meeting 5% of the votes that may be cast at that Special General Meeting make a written request to the Company for a General Meeting to be held for a proper purpose, the directors must:
- (a) within 21 days of the members' request, give all relevant members notice of a General Meeting, and
  - (b) hold the General Meeting within 2 months of the request.
- 18.3 The percentage of votes that members have (in clause 18.2) is to be worked out as at midnight before the members request the meeting.
- 18.4 The members who make the request for a General Meeting must:
- (a) state in the request any resolution to be proposed at the meeting
  - (b) sign the request, and
  - (c) give the request to the Company.
- 18.5 The members making the request may sign the request by signing a physical form of the document by hand or by signing an electronic form of the document using electronic means, which identifies the person and indicates the person's intention.
- 18.6 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.
- 18.7 If the directors do not call the meeting within 21 days of being requested under clause 18.2, 50% or more of the members who made the request may call and arrange to hold a General Meeting.
- 18.8 To call and hold a meeting under clause 18.7 the members must:

- (a) as far as possible, follow the procedures for General Meetings set out in this constitution,
  - (b) call the meeting using the list of members on the Company's member register, which the Company must provide to the members making the request at no cost, and
  - (c) hold the General Meeting within three months after the request was given to the Company.
- 18.9 The Company must pay the members who request the General Meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

### **19. Using technology to hold meetings**

- 19.1 The Company may hold a General Meeting at two or more venues using any Virtual Meeting Platform or using a Virtual Meeting Platform only, where the platform gives members a reasonable opportunity to participate, including to hear and be heard.
- 19.2 Anyone using this platform is taken to be present in person at the meeting.
- 19.3 If the General Meeting is held using a Virtual Meeting Platform only, then
- (a) The place of the meeting is taken to be the registered office of the Company, and
  - (b) The time of the meeting is taken to be the time at the registered office of the Company.
- 19.4 If the General Meeting is held at more than one physical venue (whether or not it is also held using a Virtual Meeting Platform), then:
- (a) The place of the meeting is taken to be the main physical venue of the meeting as set out in the notice of the meeting, and
  - (b) The time of the meeting is taken to be the time at the main physical venue of the meeting as set out in the notice of the meeting.

### **20. Notice of General Meetings**

- 20.1 Notice of a General Meeting must be given to:
- (a) each member entitled to vote at the meeting
  - (b) each director, and
  - (c) the auditor (if any).
- 20.2 Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- 20.3 Subject to clause 20.4, notice of a General Meeting may be provided less than 21 days before the meeting if members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 20.4 Notice of a General Meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director
  - (b) appoint a director in order to replace a director who was removed, or

- (c) remove an auditor.

**20.5 Notice of a General Meeting must include:**

- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places or virtually, the Virtual Meeting Platform that will be used to facilitate this);
- (b) a statement regarding the member's right to request documents be sent in electronic or physical form;
- (c) the general nature of the meeting's business;
- (d) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution; and
- (e) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
  - i. the proxy does not need to be a member of the Company;
  - ii. the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
  - iii. the proxy form must be delivered to the Company at least 48 hours before the meeting.

**20.6 If a General Meeting is adjourned for one month or more, the members must be given new notice of the resumed meeting.**

**21. Quorum at General Meetings**

- 21.1** For a General Meeting to be held, at least 25 members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 21.2** No business may be conducted at a General Meeting if a quorum is not present.
- 21.3** If there is no quorum present within 30 minutes after the starting time stated in the notice of General Meeting, if convened upon the requisition of members, the meeting shall be dissolved, in any other case, the Members Present (being not less than nine (9), subject to Constitution or any Rules or By-laws of the Company) shall be a quorum. If after 30 minutes after the starting time stated in the notice of General Meeting and the meeting was not convened upon a requisition of members the General Meeting is adjourned to the date, time and place that the Chairperson specifies. If the Chairperson does not specify one or more of those things, the meeting is adjourned to:
  - (a) if the date is not specified – the same day in the next week
  - (b) if the time is not specified – the same time, and
  - (c) if the place is not specified – the same place.

- 21.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

## **22. Right of non-members to attend meetings**

- 22.1 The Chairperson of a General Meeting may invite any person to attend and address a meeting.
- 22.2 Any auditor and any director of the Company is entitled to attend and address a General Meeting.
- 22.3 The Company must give the auditor (if any) any communications relating to the General Meeting that a member of the Company is entitled to receive.

## **23. Representatives of members**

- 23.1 An incorporated member may appoint as a representative:
- (a) one individual to represent the member at meetings and to sign resolutions under clause 29, and
  - (b) the same individual or another individual for the purpose of being appointed or elected as a director.
- 23.2 The appointment of a representative by a member must:
- (a) be in writing
  - (b) include the name of the representative
  - (c) be signed on behalf of the member, and
  - (d) be given to the Company or, for representation at a meeting, be given to the Chairperson before the meeting starts.
- 23.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
- 23.4 The appointment may be standing.

## **24. Chairperson for General Meetings**

- 24.1 The Chairperson is entitled to chair General Meetings.
- 24.2 The Members Present and entitled to vote at a General Meeting may choose a director or member to be the chairperson for that meeting if:
- (a) there is no Chairperson, or
  - (b) the Chairperson is not present within 30 minutes after the starting time set for the meeting, or
  - (c) the Chairperson is present but says they do not wish to act as chairperson of the meeting.

## **25. Role of the Chairperson**

- 25.1 The Chairperson is responsible for the conduct of the General Meeting.
- 25.2 The Chairperson must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 25.3 The Chairperson has a casting vote.

## **26. Adjournment of meetings**

- 26.1 If a quorum is present, a General Meeting must be adjourned if a majority of Members Present direct the chairperson to adjourn it.
- 26.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## **Members' resolutions and statements**

### **27. Members' resolutions and statements**

- 27.1 Members with at least 5% of the votes that may be cast on a resolution may give:
  - (a) written notice to the Company of a resolution they propose to move for a proper purpose at a General Meeting (**members' resolution**); and/or
  - (b) a written request to the Company that the Company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a General Meeting (**members' statement**).
- 27.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 27.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 27.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 27.5 The percentage of votes that members have (as described in clause 27.1) is to be worked out as at midnight before the request or notice is given to the Company.
- 27.6 If the Company has been given notice of a members' resolution for a proper purpose under clause 27.1(a), the resolution must be considered at the next General Meeting held more than two months after the notice is given.
- 27.7 This clause does not limit any other right that a member has to propose a resolution at a General Meeting.

### **28. Company must give notice of proposed resolution or distribute statement**

- 28.1 If the Company has been given a notice or request under clause 27:
  - (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the Company's cost, or
  - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the Company in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a General Meeting, the members may pass a resolution that the Company will pay these expenses.

- 28.2 The Company does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
- (a) it is more than 1 000 words long
  - (b) the directors consider it may be defamatory
  - (c) clause 28.1(b) applies, and the members who proposed the resolution or made the request have not paid the Company enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members, or
  - (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a General Meeting or is otherwise not a valid resolution able to be put to the members.

## **29. Resolutions without meetings**

- 29.1 Subject to clause 29.3, the directors may put a resolution to the members to pass a resolution without a General Meeting being held.
- 29.2 The directors must notify the auditor (if any) as soon as possible that a resolution has or will be put to members and set out the wording of the resolution.
- 29.3 The Company cannot pass resolutions for the below without holding a meeting:
- (a) for a resolution to remove an auditor or remove a director;
  - (b) for passing a Special Resolution; or
  - (c) where the Corporations Act or this Constitution requires a meeting to be held.
- 29.4 A resolution is passed if all the members entitled to vote on the resolution sign or agree to the resolution, in the manner set out in clause 29.5 or clause 30.6.
- 29.5 Members may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording is the same in each copy.
- 29.6 The Company may send a resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

## **Voting at General Meetings**

### **30. How many votes a member has**

Each member has one vote.

### **31. Challenge to member's right to vote**

- 31.1 A member or the Chairperson may only challenge a person's right to vote at a General Meeting at that meeting.

- 31.2 If a challenge is made under clause 31.1, the chairperson must decide whether the person may vote. The chairperson's decision is final.

### **32. How voting is carried out**

- 32.1 Voting must be conducted and decided by:
- (a) a show of hands;
  - (b) a vote in writing; or
  - (c) another method chosen by the Chairperson that is fair and reasonable in the circumstances.
- 32.2 Before a vote is taken, the Chairperson must note whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 32.3 On a show of hands, the Chairperson's decision is conclusive evidence of the result of the vote.
- 32.4 The Chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### **33. When and how a vote in writing must be held**

- 33.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) Members Present with at least 5% of the votes that may be passed on the relevant resolution (worked out as at the midnight before the vote in writing is demanded); or
  - (b) The Chairperson of the meeting.
- 33.2 A vote in writing must be taken when and how the Chairperson directs, unless clause 33.3 applies.
- 33.3 A vote in writing must be held immediately if it is demanded under clause 33.1:
- (a) For the election of a Chairperson under clause 24.2; or
  - (b) To decide whether to adjourn the meeting.
- 33.4 A demand for a vote in writing may be withdrawn.

### **34. Appointment of proxy**

- 34.1 A member may appoint a proxy to attend and vote at a General Meeting on their behalf.
- 34.2 A proxy does not need to be a member.
- 34.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting;
  - (b) vote in a vote in writing (but only to the extent allowed by the appointment); and
  - (c) join in to demand a vote in writing under clause 33.1.



- 34.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address;
  - (b) the Company's name;
  - (c) the proxy's name or the name of the office held by the proxy; and
  - (d) the meeting(s) at which the appointment may be used.
- 34.5 A proxy appointment may be standing (ongoing).
- 34.6 Proxy forms must be received by the Company at the address stated in the notice under clause 20.5(e) or at the Company's registered address at least 48 hours before a meeting.
- 34.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 34.8 Unless the Company receives written notice before the start or resumption of a General Meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies;
  - (b) is mentally incapacitated;
  - (c) revokes the proxy's appointment; or
  - (d) revokes the authority of a representative or agent who appointed the proxy.
- 34.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

### **35. Voting by proxy**

- 35.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).
- 35.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
  - (b) if the way they must vote is specified on the proxy form, must vote that way; and
  - (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

## **Directors**

### **36. Number of directors**

- 36.1 The Company must have at least three and may have up to a total of:
- (a) One director appointed by each Division; and
  - (b) Up to three directors appointed by the Board.

- 36.2 For the avoidance of doubt, the Board will not be improperly constituted if a Division has not appointed a director or a director appointed by a Division ceases to hold office.
- 36.3 The Company may from time to time by ordinary resolution passed at a General Meeting increase or reduce the number of officers or directors of the Company that may be appointed.

### **37. Election and appointment of directors**

- 37.1 The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the Company.
- 37.2 The members may elect a director by a resolution passed in a General Meeting.
- 37.3 Each of the directors must be appointed by a separate resolution, unless:
- (a) the Members Present have first passed a resolution that the appointments may be voted on together; and
  - (b) no votes were cast against that resolution.
- 37.4 A person is eligible for election as a director of the Company if they:
- (a) are a member of the Company, or a representative of a member of the Company (appointed under clause 23);
  - (b) are 18 years of age or older;
  - (c) are nominated by two members or representatives of members entitled to vote (unless the person was previously elected as a director at a General Meeting and has been a director since that meeting);
  - (d) give the Company their signed consent to act as a director of the Company; and
  - (e) are not ineligible to be a director under the Corporations Act or the Act.
- 37.5 Subject to cl 36, the directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
- (a) is a member of the Company, or a representative of a member of the Company (appointed under clause 23);
  - (b) is 18 years of age or older;
  - (c) gives the Company their signed consent to act as a director of the Company; and
  - (d) is not ineligible to be a director under the Corporations Act or the Act.
- 37.6 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act but only:
- (a) in an emergency;
  - (b) for the purpose of increasing the number of directors to three (or higher if required for a quorum); or
  - (c) to call a General Meeting.

### **38. Election of Chairperson**

- 38.1 The directors must elect a director as the Company's Chairperson.
- 38.2 The Chairperson will be called the President.
- 38.3 The directors may also elect a Vice-President. The Vice President will act as in the capacity of Chairperson if at any meeting the President is not present.

### **39. Term of office**

- 39.1 Other than a director appointed under clause 37.5, a director's term of office will be for a minimum of three years and starts at the end of the General Meeting at which they are elected and ends at the end of the General Meeting at which they retire.

### **40. When a director stops being a director**

- 40.1 A director stops being a director if they:
  - (a) give written notice of resignation as a director to the Company;
  - (b) die;
  - (c) are removed as a director by a resolution of the members;
  - (d) stop being a member of the Company;
  - (e) are a representative of a member, and that member stops being a member;
  - (f) are a representative of a member, and the member notifies the Company that the representative is no longer a representative
  - (g) are absent for 3 consecutive directors' meetings without approval from the directors; or
  - (h) become ineligible to be a director of the Company under the Corporations Act or the Act.

## **Powers of directors**

### **41. Powers of directors**

- 41.1 The directors are responsible for managing and directing the activities of the Company to carry out the purpose(s) set out in clause 4.
- 41.2 The directors may use all the powers of the Company except for powers that, under the Corporations Act or this constitution, may only be used by members.
- 41.3 The directors must decide on the responsible financial management of the Company including:
  - (a) any suitable written delegations of power under clause 42; and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 41.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a General Meeting.

## **42. Delegation of directors' powers**

- 42.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the Company (such as a chief executive officer) or any other person, as they consider appropriate.
- 42.2 The Company must keep appropriate records of any delegations.

## **43. Payments to directors**

- 43.1 The Company must not pay directors' fees.
- 43.2 The Company may:
- (a) pay a director for work they do for the Company, other than as a director, if the amount is no more than a reasonable fee for the work done; or
  - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the Company.
- 43.3 Any payment made under clause 43.2 must be approved by the directors.

## **44. Execution of documents**

- 44.1 The Company may execute a document without using a common seal if the document is signed by:
- (a) two directors of the Company;
  - (b) a director and the secretary; or
  - (c) or some other person or combination of persons appointed by the board for that purpose,
- whether by signing a physical form of the document by hand or by signing an electronic form of the document using electronic means, which identifies the person and indicates the person's intention.

## **45. Validity**

- 45.1 An act done by a director or by a meeting of the directors or a committee attended by a director is not invalid just because:
- (a) of a defect in the appointment of the director;
  - (b) the person is disqualified from being a director or has vacated office; or
  - (c) the person is not entitled to vote,
- if that circumstance was not known by the person or the directors or committee, as the case may be, when the act was done.

## **Duties of directors**

### **46. Duties of directors**

- 46.1 The directors must comply with their duties:
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company;

- (b) to act in good faith in the best interests of the Company and to further the charitable purpose(s) of the Company set out in clause 4
- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 47;
- (f) to ensure that the financial affairs of the Company are managed responsibly; and
- (g) not to allow the Company to operate while it is insolvent.

#### **47. Conflicts of interest**

- 47.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a resolution to be passed under cl 54):
- (a) to the other directors; or
  - (b) if all of the directors have the same conflict of interest, to the members at the next General Meeting, or at an earlier time if reasonable to do so.
- 47.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 47.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a resolution to be passed under cl 54) must not:
- (a) be present at the meeting while the matter is being discussed; or
  - (b) vote on the matter,
- except as provided under clauses 47.4.
- 47.4 A director may still be present and vote if:
- (a) their interest arises because they are a member of the Company, and the other members have the same interest;
  - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the Company (see clause 67);
  - (c) their interest relates to a payment by the Company under clause 66 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
  - (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter; or
  - (e) the directors who do not have a material personal interest in the matter pass a resolution that:
    - i. identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the Company; and
    - ii. says that those directors are satisfied that the interest should not stop the director from voting or being present.

## Directors' meetings

### 48. When the directors meet

The directors may decide how often, where and when they meet.

### 49. Calling directors' meetings

- 49.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 49.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

### 50. Chairperson for directors' meetings

- 50.1 The Chairperson is entitled to chair directors' meetings.
- 50.2 The directors at a directors' meeting may choose a director to chair that meeting if the Chairperson is:
  - (a) not present within 30 minutes after the starting time set for the meeting; or
  - (b) present but does not want to act as chairperson of the meeting.

### 51. Quorum at directors' meetings

- 51.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of directors.
- 51.2 A quorum must be present for the whole directors' meeting.

### 52. Using technology to hold directors' meetings

- 52.1 The directors may hold their meetings by using any Virtual Meeting Platform that is agreed to by all of the directors.
- 52.2 The directors' agreement may be a standing (ongoing) one.
- 52.3 A director may only withdraw their consent within a reasonable period before the meeting.

### 53. Passing directors' resolutions

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

### 54. Resolutions of directors without a meeting

- 54.1 The directors may pass a resolution without a directors' meeting being held.
- 54.2 A resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 54.3 or clause 54.4.
- 54.3 Each director may sign:
  - (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.

- 54.4 The Company may send a resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 54.5 The resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 54.3 or clause 54.4.

## Divisions and Branches

### 55. State Divisions

- 55.1 There shall be only a maximum of one State Division or Branch in each State or Territory of Australia., and for such time as a Branch exists in a State or Territory of Australia, a State Division cannot be established in the same State or Territory.
- 55.2 A State Division must:
- (a) Adopt the name “Institute of Public Works Engineering Australasia (State or Territory) Division” or “Institute of Public Works Engineering Australasia (State or Territory);
  - (b) Adopt to the satisfaction of the Company a Constitution including the rules and by-laws provided by the Company from time to time as applicable;
  - (c) Adopt the same membership grades as the Company;
  - (d) Adopt the same logo as the Company; and
  - (e) Restrict its membership to members who either reside or primarily work in that State or Territory or a State or Territory in which there is no State Division, except with the consent of the Company.
- 55.3 The existing State Divisions of the existing incorporated association known as Institute of Public Works Engineering Australasia Limited shall be State Divisions of the Company.
- 55.4 Where no State Division or Branch currently exists in a State or Territory, an application to be a State Division in that State or Territory will not be accepted unless at least fifty per cent of the members of the Company who reside in the State or Territory have voted in favour of the formation of the State Division.
- 55.6 In the event that a State Division ceases to be a State Division of the Company, then it shall forthwith cease to use the name and logo of the Company.
- 55.7 A State Division shall cease to be a State Division of the Company if:
- (a) It withdraws by notice in writing to the Secretary of the Company.
  - (b) It is expelled by a Resolution passed by a majority of three fourths (3/4) of the directors on the grounds that:
    - (i) It has refused or failed to comply with this Constitution, the rules or by-laws as applicable;
    - (ii) It has engaged in conduct which is inconsistent with the purposes or prejudicial to the interests of the Company; or
    - (iii) For any other proper reason,

**PROVIDED THAT** at least one (1) month before the meeting of the directors at which a resolution for expulsion is passed the State Division shall have had notice of such meeting and of what is alleged against it and of the intended resolution for its expulsion and that it shall at such meeting and before the passing of such resolution have had an opportunity to give orally or in writing any explanation or defence it may think fit and provided further that any such State Division may by notice in writing lodged with the Secretary at least seven (7) days before the time for the holding of the meeting at which the resolution for its expulsion is to be considered by the directors elect to have the question of its expulsion dealt with by the Company in a Special General Meeting and in that event a Special General Meeting of the Company shall be called for the purpose and if at the meeting a resolution for the expulsion of the State Division be passed by a majority of two thirds, the State Division shall be expelled and its name removed as a State Division of the Company.

55.8 A State Division shall:

- (a) Operate under its own Constitution, rules and by-laws as applicable;
- (b) Have power to make its own regulations provided they are consistent with the Memorandum and Articles of Association, Constitution, Rules and By-laws provided by the Company;
- (c) Manage the affairs and represent the interests of its members at the State or Territory and local levels;
- (d) Have State directors (or their equivalent) elected by its members to manage the affairs of the State Division;
- (e) Have power to administer its own Foundations and Regional Groups; and
- (f) Retain ownership and control over any assets vested in it from time to time.

## **56. Special Divisions**

56.1 A body, association or other entity in a State or Territory, in the Commonwealth of Australia or in any other part of the world or a sub-group or committee of that body, association or other entity whose purposes are similar to those of the Company and whose members fulfill the membership criteria of the Company may apply to be a Special Division of the Company. Any such body, association or entity or sub-group or committee which does apply to be a Special Division of the Company, and is accepted as such by the directors, is called a Special Division.

56.2 The directors must not accept an application to be a Special Division in any State or Territory in which there is a State Division unless passed by a majority of 75% of the directors.

56.3 An application to be a Special Division will not be accepted unless:

- (a) At least 75% majority of votes cast by members of the proposed Special Division have voted in favour of the formation of the Special Division and



resolved to subscribe to the purposes and membership grades of the Company;

- (b) All of the members of the body, association or other entity or sub-group or committee who fulfill the membership criteria of the Company will be members of the proposed Special Division;
- (c) The members of the proposed Special Division will appoint an executive to deal specifically with Company matters;
- (d) The executive of the proposed Special Division will appoint a representative to sit on the board of directors in accordance with Clause 36;
- (e) A copy of the Constitution and Statement of Purposes of the proposed Special Division is submitted to the Company and does not conflict with the purposes or Constitution of the Company;
- (f) A copy of any amendments to the Constitution or statement of purposes of the proposed Special Division from time to time are submitted to the Company and do not conflict with the purposes or Constitution of the Company from time to time;
- (g) There may be more than one Special Division in each State or Territory, in the Commonwealth of Australia or in any other part of the world; and
- (h) It is intended that Special Divisions will arise from the expansion of the Membership of the Company into other areas and not from the fragmentation of the existing membership of State Divisions.

## **57. Branches**

57.1 There can be a maximum of one Branch or State Division in each State or Territory of Australia, and for such time as a State Division exists in a State or Territory of Australia, a Branch cannot be established in the same State or Territory.

57.2 A Branch may only be established if:

- (a) prior to the Special General Meeting being convened under Clause 57.2(b), the directors have passed a resolution approving:
  - i. the establishment of a Branch in the relevant State or Territory; and
  - ii. the proposed Rules, Regulations or By-Laws to be adopted to govern the Branch from its establishment; and
- (b) a Special General Meeting of the proposed Branch Members has been convened and a majority of those present at that meeting have approved:
  - i. the establishment of the Branch;
  - ii. the Persons to be appointed as the first Branch Committee;
  - iii. the member of the Branch Committee to be appointed as a director;
  - iv. the Rules, Regulations or By-Laws to govern the Branch from its establishment.

57.3 Following its establishment:

- (a) the Branch will operate under this Memorandum and Articles of Association and its Rules, Regulations and By-Laws;
- (b) Branch Members have the power to amend the Rules, Regulations and By-Laws of the Branch by Special Resolution of the Branch Members provided that:
  - i. subject to clause 57.4, any amendment does not conflict with these Memorandum and Articles of Association; and
  - ii. the directors have approved the proposed variation before it is put to the Branch Members for approval;
- (c) the Branch Committee will administer and manage the affairs of the Branch and represent the interests of the Branch Members;
- (d) the Branch will, as far as is possible and subject to its Rules, Regulations and By-laws, operate independently, but the assets and finances of the Branch will be owned the Company and the Company will bear ultimate liability for, and underwrite the actions of, the Branch;
- (e) the Branch will be entitled to appoint a director in accordance with this Constitution;
- (f) Branch Members, as provided for in Clauses 6 and 6A, will be a distinct class of members of the Company; and
- (g) Branch Members will be entitled to call Special General Meetings in accordance with Clause 18, but any business to be transacted at a Special General Meeting of the Branch Members must be limited to business of the Branch and not of the Company generally.

57.4 Notwithstanding anything else contained in this Constitution, the Rules, Regulations or By-Laws of a Branch will not be deemed to be inconsistent with these Memorandum and Articles of Association of the Company to the extent that they adopt procedural requirements (for example, requirement to call a meeting of Branch Members, the identity of a chairperson or requirements for a quorum) that differ to these Memorandum and Articles of Association.

57.5 A Branch will be dissolved and cease to be a Branch if:

- (a) the dissolution is undertaken in accordance with the procedure (if any) set out in the Rules, Regulations or By-Laws of the Branch; or
- (b) subject to Clause 57.6, the Branch is dissolved by a resolution passed by at least three quarters of the directors on the grounds that the Branch:
  - i. has refused or materially failed to comply with this Constitution or its Rules, Regulations or By-laws as applicable; or
  - ii. has engaged in conduct which is wholly inconsistent with the purposes or prejudicial to the material interests of the Company.

57.6 Prior to passing a resolution under Clause 57.5(b):

- (a) the directors must give the Branch an opportunity to be heard or to make a written submission relating to the grounds giving rise to the proposed dissolution at least one calendar month before the directors' meeting at which the matter will be determined;
  - (b) the directors must communicate their determination to the Branch. In the event of an adverse determination, subject to Clause 57.6(c), the Branch will be dissolved 30 days after the Directors do so;
  - (c) the Branch may appeal to a meeting of the Members against the dissolution. The Branch must give written notice to the Company of its intention to appeal within 14 days after the directors communicate their determination to the Branch;
  - (d) in the event of an appeal against the dissolution:
    - i. the Branch must be given an opportunity to put its case to the meeting of Members by giving the Company a written statement for circulation to the Members (provided that the statement is under 1,000 words and in the reasonable opinion of the Secretary is not defamatory) and/or appointing a representative to speak to the motion at the meeting;
    - ii. notwithstanding the passing of the director's resolution, the Branch will only be dissolved if the meeting of Members upholds the determination of the directors by Special Resolution, and in that event, the Branch is dissolved as and from the date of the meeting of Members.
- 57.7 Following the dissolution of a Branch, any Surplus Assets (after satisfaction of its debts and liabilities) must be given to one or more of the charitable entities, funds, authorities or institutions determined by the Branch Members (or in default, by the Supreme Court of the jurisdiction in which the Branch is established), provided that the relevant recipient satisfies the requirements in Clauses 57.8 and 57.9.
- 57.8 If any surplus remains following the winding up of the Company, the surplus can be transferred to any State or Special Divisions which is charitable and which have objects which are similar to the Objects. Otherwise any such surplus will not be paid to or distributed amongst any other Members, but will be given or transferred to another institution(s) or corporation(s) to advance charitable purpose(s) and which:
- (a) has objects which are similar to the Objects;
  - (b) has a constitution which requires its income and property to be applied in promoting its objects;
  - (c) has a constitution which prohibits it from paying or distributing its income and property amongst its Members to an extent at least as great as imposed on the Company.
- 57.8 The identity of the corporation(s) or institution(s) referred to in Clause 57.7 is to be determined:

- (a) in the case of Surplus Assets held for the benefit of a Branch, in accordance with Clause 85G; and otherwise
  - (b) by the Board; or
  - (c) if the Board does not decide or does not wish to decide, then by the Members;
- in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of New South Wales for determination.

## Secretary

### 58. Appointment and role of secretary

- 58.1 The Company must have at least one secretary, who may also be a director.
- 58.2 A secretary must be appointed by the directors (after giving the Company their signed consent to act as secretary of the Company) and may be removed by the directors.
- 58.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 58.4 The secretary must ensure that the following are maintained:
  - (a) a register of the Company's members, and
  - (b) the minutes and other records of General Meetings (including notices of meetings), directors' meetings and resolutions.

## Minutes and records

### 59. Minutes and records

- 59.1 The Company must, within one month, make and keep the following records:
  - (a) minutes of proceedings and resolutions of General Meetings;
  - (b) minutes of any other resolutions of members
  - (c) a copy of a notice of each General Meeting; and
  - (d) a copy of a members' statement distributed to members under clause 28.
- 59.2 The Company must, within one month, make and keep the following records:
  - (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
  - (b) minutes of any other resolutions of directors.
- 59.3 To allow members to inspect the Company's records:
  - (a) the Company must give a member access to the records set out in clause 59.1, and
  - (b) the directors may authorise a member to inspect other records of the Company, including records referred to in clause 59.2 and clause 60.1.

- 59.4 The directors must ensure that minutes of a General Meeting or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
  - (b) the chairperson of the next meeting.
- 59.5 The directors must ensure that minutes of the passing of a resolution passed without a meeting (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

## **60. Financial and related records**

- 60.1 The Company must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 60.2 The Company must also keep written records that correctly record its operations.
- 60.3 The Company must retain its records for at least 7 years.
- 60.4 The directors must take reasonable steps to ensure that the Company's records are kept safe.

## **Notice**

### **61. What is notice**

- 61.1 Anything written to or from the Company under any clause in this constitution is written notice and is subject to clauses 62 to 64, unless specified otherwise.
- 61.2 Clauses 62 to 64 do not apply to a notice of proxy under clause 34.6.

### **62. Notice to the Company**

Written notice or any communication under this constitution may be given to the Company, the directors or the secretary by:

- (a) delivering it to the Company's registered office;
- (b) posting it to the Company's registered office or to another address chosen by the Company for notice to be provided;
- (c) sending it to an email address or other electronic address notified by the **Company** to the members as the Company's email address or other electronic address; or
- (d) sending it to the fax number notified by the Company to the members as the Company's fax number.

### **63. Notice to members**

- 63.1 Written notice or any communication under this constitution may be given to a member:

- (a) in person;
  - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
  - (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any);
  - (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any);, or
  - (e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- 63.2 If a member elects to receive documents in physical form or electronic form, the Company must take reasonable steps to send documents in a manner that complies with the election.
- 63.3 If the Company does not have an address for the member, the Company is not required to give notice in person.

#### **64. When notice is taken to be given**

- 64.1 A notice:
- (a) delivered in person, or left at the recipient's address: is taken to be given on the day it is delivered
  - (b) sent by post: is taken to be given on the third Business Day after it is posted to the address notified by the recipient and payment of postage costs
  - (c) sent by email, fax or other electronic method: is taken to be given when it is sent, unless the sender receives an automated message that the notice has not been delivered, and
  - (d) given under clause 63.1(e): is taken to be given on the Business Day after the notification that the notice is available is sent.
- 64.2 If the delivery or receipt of a notice is on a day which is not a Business Day or is after 5.00pm on a Business Day, it is deemed to be received at 9.00am on the following Business Day.

## **Financial matters**

### **65. Company's financial year**

The Company's financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

## **Indemnity, insurance and access**

### **66. Indemnity**

- 66.1 The Company indemnifies each officer of the Company out of the assets of the Company, to the extent permitted by law (including the Corporations Act),

against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.

- 66.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 66.3 The indemnity is a continuing obligation and is enforceable by an officer:
- (a) even though that person is no longer an officer of the Company; and
  - (b) is enforceable without that person having first to incur any expense or make any payment.

## **67. Insurance**

To the extent permitted by law (including the Corporations Act), and if the directors consider it appropriate, the Company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Company against any liability incurred by the person as an officer of the Company.

## **68. Directors' access to documents**

- 68.1 A director has a right of access to the financial records of the Company at all reasonable times.
- 68.2 The directors may resolve to give a director or former director access to other records, including documents provided for or available to the directors.

## **Winding up**

### **69. Winding up voluntarily**

- 69.1 If permitted by law, the Company may be wound up voluntarily by Special Resolution.

### **70. Surplus Assets not to be distributed to members**

If the Company is wound up, any Surplus Assets must not be distributed to a member or a former member of the Company, unless that member or former member is a charity described in clause 71.

### **71. Distribution of Surplus Assets**

- 71.1 Subject to the Corporations Act and any other applicable Act, and any court order, any Surplus Assets that remain after the Company is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 4, and
  - (b) which also prohibit the distribution of any Surplus Assets to its members to at least the same extent as the Company.
- 71.2 The decision as to the charity or charities to be given the Surplus Assets must be made by a Special Resolution of members at or before the time of winding up. If the members do not make this decision, the Company may apply to the Supreme Court to make this decision.

## Definitions and interpretation

### 72. Definitions

In this constitution:

**ACNC** means the Australian Charities and Not-for-Profits Commission.

**Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) or the Charities Act 2005 (NZ) as relevant in the circumstances.

**AGM** means Annual General Meeting.

**Business Day** means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in the place where the **Company's** registered office is located.

**Branch** means a branch of the Company.

**Branch Committee** means the committee of management for a Branch.

**Branch Member** means a member of a Branch from time to time.

**Charity** means an entity that is registered with the ACNC and / or NZ Charities

**Company** means the **company** referred to in clause 1.

**Corporations Act** means the *Corporations Act 2001* (Cth) or the Companies Act 1993 (NZ) as relevant in the circumstances.

**Chairperson** means a person elected by the directors to be the **Company's** chairperson under clause 38. The Chairperson will be called the President of the Company.

**Division** means a State Division, a Special division or a Branch.

**General Meeting** means an AGM or a Special General Meeting as relevant in the circumstances.

**Member** means a member of the Company pursuant to clauses 8 to 15 and includes Branch Members, Division Members, Full Members, Fellows, Emeritus Members, Honorary Members, Student Members and International Members (and Membership has the corresponding meaning).

**Member Present** means, in connection with a **General Meeting**, a Member who is in attendance in person, by representative or by proxy at the meeting.

**Registered Charity** means a charity that is registered under the **Act**.

**NZ Charities** means Charities Services New Zealand.

**President** means the Chairperson appointed pursuant to clause 38.



**Special General Meeting** means a meeting of the members of the Company or any class of members (including a meeting of members of any Division or proposed Division), other than the AGM.

**Regulation** means whichever of the Australian Charities and Not-for-profits Commission Regulation 2013 (Cth) or regulations in respect of the Charities 2005 (NZ) or any amended version of those regulations which are in force from time to time as relevant in the circumstances.

**Special Resolution** means a resolution:

- i. of which notice has been given under clause 20.5(d), and
- ii. that has been passed by at least 75% of the votes cast by **Members Present** and entitled to vote on the resolution.

**State** means any State or Territory of the Commonwealth of Australia.

**State Division** means a body, association or other entity in a State or Territory of Australia whose purposes are similar to those of the Company may apply to be a State division of the Company. Any such body, association or entity which does apply to be a State Division of the Company and is accepted as such by directors, is called a State Division.

**Special Division** means a body, association or other entity accepted and continuing to be a Special Division.

**Surplus Assets** means any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.

**Vice-President** means a director who has been elected by the Board to hold this position and who has authority to undertake the role of the President on an occasion where the President is unable or unwilling to fulfil their duties at that particular time.

**Virtual Meeting Platform** means any technology that allows members to participate in a meeting, including by asking questions orally and in writing, without being physically present at the meeting.

### **73. Reading this constitution with the Corporations Act**

- 73.1 The replaceable rules set out in the Corporations Act do not apply to the Company.
- 73.2 While the Company is a registered charity, the Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts, as they apply to a registered charity.
- 73.3 If the Company is not a Registered Charity (even if it remains a charity), the Corporations Act overrides any clause in this constitution which is inconsistent with such Act.

73.4 A word or expression that is defined in the Corporations Act, or used in such Act and covering the same subject, has the same meaning as in this constitution.

#### **74. Interpretation**

In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).