



Constitution of Company Limited by Guarantee

Australia New Zealand Industrial Gas Association Limited
ACN 003 067 178

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Constitution of Company Limited by Guarantee

1. Introduction

1.1 Name of Company

The name of the Company is Australia New Zealand Industrial Gas Association Limited.

1.2 Legal capacity and powers of the Company

Subject to the Act, the Company has the legal capacity, and the rights, powers and privileges of a natural person.

1.3 Limited liability

The liability of Members is limited.

1.4 Definitions

In this Constitution, unless the context requires otherwise:

Act means the *Corporations Act 2001* (Cth);

Alternate Director means any person who, for the time being, holds registered office of the Company as an alternate director duly appointed in accordance with this Constitution;

Board means the board of directors of the Company;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne;

Chairperson means a Director who is the chairperson of the Company for the time being;

Company means Australia New Zealand Industrial Gas Association Limited ACN 003 067 178;

Constitution means this constitution of the Company as amended or replaced from time to time;

Directors means all or any number of the directors for the time being of the Company appointed in accordance with this Constitution;

Earlier Constitution means the constitution of the Company adopted by special resolution on 16 July 2003 and further amended by special resolution on 1 December 2004;

Event of Default means, in relation to a Member, the occurrence of any one or more of the following events or circumstances:

- (a) the Member fails to comply with any of its material obligations under this Constitution;
- (b) an Insolvency Event occurs in relation to the Member;
- (c) the Member is deregistered; and
- (d) the Member become unable to perform any or all of its obligations under this Constitution.

Financial Year means a year commencing on 1 July and ending on 30 June;

Government Agency means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation or standards association established under statute;

industrial gases means all kinds of industrial gases and includes gases sold and used in industrial, commercial, retail, medical, scientific and hospitality markets and applications and **industrial gas** has a similar meaning;

Insolvency Event means the occurrence of any one or more of the following events in relation to a Member:

- (a) an application is made to a court for an order that it be wound up, declared bankrupt or that a provisional liquidator, receiver or administrator be appointed, and the application is not withdrawn, struck out or dismissed within 21 days of it being made;
- (b) a liquidator or provisional liquidator is appointed and the appointment is not terminated within 21 days of it being made;
- (c) a receiver or administrator is appointed to any of its assets and the appointment is not terminated within 21 days of it being made; and
- (d) it is insolvent as disclosed in its accounts, or otherwise states that it is insolvent, or it is presumed to be insolvent under an applicable law.

Member means a person who is registered as a member of the Company;

Membership means the status of being a Member;

Register means the register of Members of the Company as required to be kept under section 168 of the Act;

Seal means the common seal of the Company (if any);

Unacceptable Conduct means conduct of a Member which is contrary to the pursuit of the Company's objects or which otherwise falls short of the standard of conduct expected of a Member and includes a failure to participate in the business and activities of the Company, including through its Director and other officers, in committees, working groups and in the performance of other assigned tasks and generally not to show the level of commitment, skill, care and diligence expected of a Member by the Members as a whole;

Secretary means any person appointed to perform the duties of a secretary of the Company.

Any other terms which are not specifically defined in this Constitution have the meanings given to them in Act.

1.5 Interpretation

In this Constitution, unless a contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) headings are used for convenience only and do not affect the interpretation of this Constitution;
- (d) a reference to a document includes the document as modified from time to time and any document replacing it;
- (e) if something is to be done on a day which is not a Business Day, then that thing must be done on the next or following Business Day;
- (f) **person** includes a natural person and any body or entity, whether incorporated or not;
- (g) **month** means calendar month;
- (h) **year** means twelve months or, in any case in which provision is made in this Constitution for the term of office of a Director or officer, a **year** means the period between one annual general meeting and the next annual general meeting;
- (i) **in writing** includes any communication sent by letter, fax or e-mail;
- (j) a reference to any statute, section, clause, regulation, standard or code includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, section, clause, regulation, standard or code replacing it;
- (k) a reference to a specified section, clause, paragraph, schedule or item of any statute, regulation, standard or code is a reference to the equivalent section of the statute, clause, regulation, standard or code which is for the time being in force;
- (l) **including** and similar expressions are not words of limitation;
- (m) money amounts are taken to be in Australian currency; and
- (n) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (“defunct body”), means the agency or body which performs most closely the functions of the defunct body.

1.6 Replaceable rules

Each of the provisions of the sections or sub-sections of the Act which would but for this clause 1.6 apply to the Company as a replaceable rule within the meaning of the Act are displaced and do not apply to the Company except in so far as they are repeated in this Constitution.

2. Objectives and undertakings

2.1 Objects

The objects for which the Company is established are:

- (a) to provide expert advice and guidance for its Members to maintain the highest level of safety and concern for the environment at work and in the community;
- (b) to provide expert advice and guidance to Government Agencies and industry bodies on codes of practice and standards used to regulate the industrial gas industry;
- (c) to proactively represent the industrial gas industry to address Government, regulatory, statutory, industry and community matters;
- (d) to promote an industry free of accidents and incidents;
- (e) to facilitate the sharing of information on safety, health and environmental matters;
- (f) to enable standardisation throughout the industrial gas industry in the areas of safety, health and environment, and technical and operational matters;
- (g) to promote the long-term sustainability of the industrial gas industry
- (h) to provide a forum for Members to share and promote their experience in the safe production, handling and use of industrial gases;
- (i) to provide Government Agencies with expert advice in the preparation of legislation and other regulations;
- (j) to provide Government Agencies and industry bodies with technical expertise in the development of standards;
- (k) to initiate the development of appropriate standards relevant to the industrial gas industry for industrial gases and related plant and equipment;
- (l) to co-operate with other associations in safety and standardisation matters, in particular with the European Industrial Gas Association and the Asian Industrial Gases Association;

- (m) to review reported accidents with the objective of informing and providing guidance to Members on how to prevent reoccurrence;
- (n) to provide advice and guidance to Members on technical issues, particularly those which are safety related;
- (o) to provide advice and guidance on relevant environmental issues, to demonstrate respect for the environment and to prevent pollution within and by the industrial gas industry;
- (p) to provide advice to Members on relevant international legislative issues and standards and the action required for effective compliance; and
- (q) to produce position papers presenting and representing the industrial gas industry on specific issues to Government Agencies, politicians and political parties.

2.2 Compliance with laws

In pursuing its objects the Company will at all times comply with all applicable laws including the *Competition and Consumer Act 2010* (Cth) and the *Commerce Act 1986* (NZ).

2.3 Members to observe and implement the Constitution

- (a) Each Member undertakes with each other Member and the Company to:
 - (i) exercise all its votes, powers and rights under this Constitution so as to give full effect to this Constitution;
 - (ii) comply fully and promptly with this Constitution so that each provision of the Constitution is enforceable by the Company and the Members among themselves (in any capacity); and
 - (iii) not unreasonably delay or withhold any action, approval, consent, direction, signature, execution, determination or decision that is required of the Member.
- (b) The obligations in this clause 2.3 include obligations on the part of a Member to:
 - (i) exercise its powers both as a Member and, where applicable, through any Director appointed by it; and
 - (ii) ensure that any Directors and all of its other officers appointed by it do any matter or thing and execute and sign all documents required of those Directors or other officers so that the Member can comply with and observe the provisions of this Constitution.

2.4 Company to observe and implement this Constitution

The Company:

- (a) must do all things necessary or desirable to give effect to the provisions and intentions of this Constitution in accordance with its terms; and
- (b) is bound by all provisions of this Constitution that expressly or by implication apply to the Company.

2.5 Further assurances

Each Member, at its own expense and within a reasonable time of being requested to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Constitution

3. The guarantee

Each Member and each former Member, who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:

- (a) payment of debts and liabilities of the Company incurred before that Member ceased to be a Member;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) any adjustment of the rights of the contributories among Members.

The maximum amount that each Member or former Member is liable to contribute is one hundred dollars (\$100).

4. Income and property of the company

4.1 Income and property

The income, property and profits of the Company will be applied solely towards the promotion of the objects of the Company.

4.2 No payments to Members

No income or property may be paid or transferred directly or indirectly to any Member while the Company is operating and on its winding up, except for Board approved:

- (a) payments to a Member in return for any services rendered or goods supplied by a Member in the ordinary and usual course of business;
- (b) repayment of loans and interest at prevailing commercial rates from a Member;
- (c) payment of rent at commercial rates for premises leased from a Member;

- (d) reimbursement of expenses properly incurred by Members and officers and employees of the Company; and
- (e) remuneration of executive officers and employees of the Company.

5. Modification of this Constitution

5.1 Modifying or repealing Constitution

This Constitution may be modified or repealed only by a special resolution of the Company in general meeting.

5.2 Date of effect

Any modification or repeal of this Constitution takes effect on the date the special resolution is passed or any later date stated, or provided for, in the resolution.

6. Rights and liabilities of members

6.1 Membership not transferable

The rights and obligations of a Member are personal and not transferable.

6.2 Distribution of surplus

If any surplus remains following the winding-up of the Company, the surplus must not be paid to or distributed amongst Members, but must be given or transferred to:

- (a) another body corporate which, by its constitution, is:
 - (i) required to pursue objects similar to those of the Company;
 - (ii) required to apply its profits (if any) or other income to promoting such objects; and
 - (iii) prohibited from making any distribution of its income or property to its members; or if no such body corporate can be identified; and/or
- (b) a corporation, university or technical school to be applied to the advancement of technical training in any branch of the industrial gas industry,

such body corporate, corporation, university or technical school to be determined by the Board at or before the winding up and, in default, by application to the Supreme Court of Victoria.

7. Membership

7.1 Admission

Any person the Board admits to Membership in accordance with this Constitution will be a Member of the Company.

7.2 Qualification

Membership is limited to corporations, associations and other entities or persons engaged in, or which have an interest in or association with, the manufacture and distribution of industrial gases in any form and corporations which are related bodies corporate of any such corporations.

7.3 Categories of Membership

Membership of the Company is divided into to the following categories:

- (a) **Full Members.** Only corporations or other entities engaged in the manufacture and distribution of industrial gases in Australia or New Zealand may be Full Members. Full Members have the right to vote at general meetings and to nominate Directors, in each case subject to this Constitution.
- (b) **Associate Members.** Corporations or other entities or persons interested in or associated with the manufacture and distribution of industrial gases in Australia or New Zealand may be Associate Members. Associate Members have no right to vote at general meetings or to nominate Directors and the provisions of this Constitution dealing with such rights will be construed accordingly. The participation of Associate Members in the affairs of the Company will be as the Board determines from time to time.
- (c) **Mutually Associated Members.** Associations and other representative bodies which have similar aims and objectives to the Company and are established outside Australia and New Zealand may be Mutually Associated Members. Mutually Associated Members have no right to vote at general meetings or to nominate Directors and the provisions of this Constitution dealing with such rights will be construed accordingly. The participation of Mutually Associated Members in the affairs of the Company will be as the Board determines from time to time.

7.4 Application for Membership

Every applicant for Membership of the Company must be proposed by one and seconded by another Full Member of the Company to both of whom the applicant is personally known. The application for membership must be made in writing, signed by the applicant and the applicant's proposer and seconder and must be in such form as the Board from time to time prescribes. In particular, the Board may determine what form of evidence is to be submitted with the application to show compliance by the applicant with clauses 7.2 and 7.3.

7.5 Determination by the Board

At the next meeting of the Board after the receipt of an application for Membership, the application will be considered by the Board, who will determine whether the application is to be accepted or rejected. The Board need not give any reason for the rejection of an application.

7.6 Notice to applicant

When an applicant has been accepted for Membership the Secretary will send to the applicant written notice of its acceptance and a request for payment of its entrance fee and first annual subscription. Upon payment of its entrance fee and first annual subscription the applicant will become a Member, provided if any such payment is not made within 2 calendar months after the date of the notice, the Board may in its discretion cancel its acceptance of the applicant's application for Membership

7.7 Entrance fee

The Board will from time to time determine the amount of the entrance fee payable by each Member but until the Board otherwise resolves the entrance fee is \$1,000.

8. Annual Subscription Fees

8.1 Obligation to pay

Each Member must pay an annual subscription fee.

8.2 Setting the fee

The Board will once each Financial Year set the annual subscription fees for the subsequent Financial Year. All annual subscription fees will become due and payable in advance on 1 July for the Financial Year for which such subscription fees are payable or at such other time as the Board determines. The Board may set fees proportionally and based on estimated amounts if necessary to do so because a Member is only a Member for part of a year.

8.3 Subscription fees payable by Members

- (a) The subscription fees for Full Members will be set according to their turnover in the most recently ended Financial Year, provided that in no circumstances will the annual subscription fee payable by a Full Member be less than \$15,000.
- (b) The subscription fees for Associate Members will be determined by the Board from time to time.
- (c) Unless the Board otherwise determines, no subscription fee will be payable by Mutually Associated Members.

9. Cessation of Membership

9.1 Cessation

A person ceases to be a Member if:

- (a) the Member resigns or gives 6 months' written notice;
- (b) the Member suffers or is guilty of an Event of Default;
- (c) the Member fails to pay its annual subscription fee or any other amount when due and payable to the Company, within 60 days of the amount being due; or
- (d) the Member is expelled under clause 10.

9.2 Suspension of benefits

If a Member fails to pay its annual subscription fee or any other amount due and payable to the Company within 30 days of the amount being due, the Member's entitlement to Membership rights, benefits and entitlements are suspended until the amount is paid.

10. Discipline, suspension and expulsion of Members

10.1 Resolution of Directors

If a majority of the Board is of the opinion that a Member:

- (a) has refused or neglected to comply with a provision of this Constitution; or
- (b) has engaged in Unacceptable Conduct; or
- (c) has acted in a manner unbecoming of a Member or prejudicial to the interests, operational efficiency or reputation of the Company,

the Board may by resolution of a majority of the Directors resolve to:

- (d) reprimand the Member; or
- (e) suspend the Member from membership for the Company for a specific period; or
- (f) expel the member from the Company.

10.2 Suspended operation

A resolution of the Board under clause 10.1 will not take effect unless and until it is confirmed at a meeting of the Board in accordance with the following clauses. For that purpose, a meeting for the Board to confirm or revoke the resolution must be held not earlier than 7 days and not later than 21 days after service on the Member of a notice under clause 10.3.

10.3 Notice to a Member

For the purpose of giving a notice suspending or expelling a Member, the Secretary must, as soon as practicable following the passing of the resolution referred to in clause 10.1, serve a notice in writing to be served on the Member. The notice must:

- (a) set out the resolution of the Board and the grounds on which it is based;
- (b) state that the Member may address the Board in relation to that resolution at a meeting of the Board to be held not earlier than 7 days and not later than 21 days after service of the notice;
- (c) state the date, place and time of that meeting; and

- (d) inform the Member that the Member may also submit to the Board at or before the date of that meeting a written representation relating to that resolution and speak to the representation.

10.4 Confirming resolution of Board

At the meeting of the Board held as referred to in clause 10.3, the Directors must:

- (a) give the Member an opportunity to be heard;
- (b) give due consideration to any written representation submitted to the Board by the Member at or before the meeting; and
- (c) by resolution confirm, vary or revoke the resolution referred to in clause 10.1.

10.5 Immediate or suspended effect

The resolution referred to in clause 10.4 (the **final resolution**) may take effect immediately, after any period of time or only on conditions specified in the resolution.

10.6 No right to appeal

There is no right of appeal against the final resolution of the Directors under clause 10.4.

10.7 Final notice to a Member

The Secretary must, within 7 days of the passing of the final resolution, by notice in writing, inform the Member of the resolution and that there is no right of appeal under the Constitution.

11. General meetings

11.1 Annual general meeting

If required to do so by the Act, the Company must hold an annual general meeting of the Company in accordance with the Act.

11.2 Power to convene general meeting

Any Director may, whenever that Director thinks fit, convene a general meeting of the Company's Members.

11.3 Notice period

- (a) Subject to the Act and clause 11.3(b), the Company must give 21 days' notice of general meetings (including annual general meetings).
- (b) The Company may call, on shorter notice than that specified in clause 11.3(a):

- (i) an annual general meeting, if all the Members entitled to attend and vote at the annual general meeting agree to do so before the annual general meeting; and
- (ii) any other general meeting, if Members holding at least 95% of the votes that may be cast at the general meeting agree to do so before the general meeting.

11.4 Notice of general meetings

Written notice of a general meeting must be sent to each Member, the Directors and the auditor of the Company.

11.5 Content of notice of general meetings

A notice of a general meeting must:

- (a) specify the place, date and time for the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate holding the meeting);
- (b) state the general nature of the business to be transacted at the meeting;
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
- (d) contain a statement that each Member has the right to appoint a proxy.

11.6 Content of notice of annual general meeting

It is not necessary for the notice of an annual general meeting to state that the business to be transacted at the meeting includes:

- (a) the consideration of the financial statements and the reports of the Directors and auditor;
- (b) the election of Directors and other officers in place of those retiring;
- (c) the appointment and fixing of the remuneration of the auditor; and
- (d) any other business which, under this Constitution or the Act, is required to be transacted at an annual general meeting.

11.7 Nature of business

All business will be special that is transacted at a general meeting, with the exception of:

- (a) the consideration of the accounts, balance sheets, and the reports of the Board and auditors;
- (b) the election of Directors and other officers in place of any Directors or other officers retiring; and

- (c) the appointment of auditors.

11.8 Notice of adjourned meeting

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 30 days or more.

11.9 Failure to give notice

Any resolution passed at a meeting is not invalidated by:

- (a) the accidental omission to give notice of a meeting to any Member or non-receipt of that notice by a Member; or
- (b) the accidental omission to send out the instrument of proxy to a person entitled to receive notice or non-receipt of that instrument.

12. Proceedings at general meetings

12.1 Circular resolutions

- (a) A resolution may be passed without a general meeting being held if all the Members 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. A body corporate's representative may sign such a circular resolution.
- (b) Identical copies of the document may be distributed for signing by different Members and taken together will constitute one and the same document.
- (c) The resolution is passed when the last Member signs the document and satisfies any requirement in this Constitution or the Act that the resolution be passed at a general meeting.

12.2 Use of technology

The Company may hold a meeting at 2 or more venues using any technology that gives Members a reasonable opportunity to participate.

12.3 Quorum

- (a) Except as otherwise provided in this Constitution, the quorum for a general meeting of the Company is all Full Members present in person or by proxy, attorney or body corporate representative and the quorum must be present at all times during the meeting.
- (b) No business will be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- (c) For the purpose of determining whether a quorum is present each person attending as a proxy, as a body corporate's representative, or as a validly appointed attorney of a Member, is taken to be a Member.

12.4 Effect of no quorum

If a quorum of the Company's Members is not present within half an hour after the time appointed for the meeting in the notice:

- (a) the meeting will be adjourned to the date, time and place that the Directors specify (or if the Directors do not specify such details, the meeting is adjourned to the same day in the next week at the same time and place) except that if the meeting is adjourned for 30 days or more, notice of the resumed meeting must be given; and
- (b) clause 12.4(a) will continue to apply until a quorum is present, provided that if the same Member fails to attend the same meeting (albeit adjourned) within 30 minutes of the appointed time for the meeting on more than one occasion, then all Members excluding that Member will constitute a quorum.

12.5 Chairperson of general meeting

- (a) The Chairperson will preside as chairperson at every general meeting of the Company.
- (b) If the Chairperson is not present within 15 minutes of the time set out for the meeting or is unwilling to act, the other Directors present must elect a Director to be the chairperson of the meeting.

12.6 Adjournment

The Chairperson may, with the consent of the Members at any meeting at which a quorum is present (and must do so if so directed by the meeting), adjourn a general meeting.

The Chairperson must adjourn a general meeting if the Members present with a majority of votes at the general meeting agree or direct that the Chairperson to do so.

12.7 Adjourned meetings

- (a) Only unfinished business is to be transacted at a meeting resumed after an adjournment.
- (b) A resolution passed at a meeting resumed after an adjournment is passed on the day it was in fact passed.

13. Voting at general meetings

13.1 Voting

- (a) A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded.
- (b) Before a vote is taken, the Chairperson must inform the general meeting whether any proxy votes have been received and how the proxy votes are to be cast.

- (c) On a show of hands, a declaration by the Chairperson is conclusive evidence of the result provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the Chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution.

13.2 Voting rights

Each Member, who is entitled to vote may vote in person or by proxy, attorney or body corporate representative authorised under the Act, at a meeting of the Members of the Company, and each Member has in the case of a vote on a show of hands or on a poll only one vote.

13.3 Resolutions

Save as provided elsewhere in this Constitution, resolutions will only be passed if decided unanimously by all Members who are entitled to vote and are present in person, or represented by proxy, attorney or corporate representative authorised under the Act.

13.4 No entitlement to vote if calls are unpaid

If a Member's annual subscription is more than 2 months in arrears, that Member:

- (d) is not entitled to be present at any general meeting;
- (e) may not vote on any question or on a poll; and
- (f) may not be counted in a quorum.

13.5 Voting by poll

- (a) A poll may be demanded by:
 - (i) the Chairperson; or
 - (ii) at least 3 Members present in person or by proxy, attorney or body corporate representative entitled to vote on the resolution.
- (b) A poll may be demanded:
 - (i) before a vote is taken; or
 - (ii) before or immediately after the voting results on a show of hands are declared.
- (c) The demand for a poll may be withdrawn.

14. Proxies

14.1 Who can appoint a proxy

A Member who is entitled to attend and vote at a general meeting may appoint a person as that Member's proxy to attend and vote for that Member at a meeting of the Company.

14.2 Execution and form of proxies

An instrument appointing a proxy:

- (a) may be contained in a facsimile or sent by email;
- (b) must be in writing under the hand of the appointer or of its duly authorised attorney if the appointer is a body corporate;
- (c) may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy may not vote on the resolution except as specified in the instrument; and
- (d) must (except in the case of proxies appointed under power of attorney), as nearly as the circumstances permit, be in the following form or in such other form as the Directors determine:

Proxy Form
Australia and New Zealand Industrial Gas Association Limited
ACN 003 067 178 (the Company)
General meeting
[date]

I,

of

being a Member of the Company appoint:

of

or if no person is named, the Chairperson of the general meeting as my proxy to vote and act for me and on my behalf at the general meeting of members of the Company to be held on *[date]* and any other day to which that general meeting is adjourned or postponed.

I direct my proxy to vote in the following manner:

No	Resolution <i>[list in sequence of ordinary and special business]</i>	For	Against	Abstain
1.				
2.				
3.				
4.				

If you have appointed the Chairperson as your proxy and you do not wish to direct the Chairperson how to vote please place a mark in the box (below).

By marking this box, you acknowledge that the Chairperson may exercise your proxy even if he or she has an interest in the outcome of the resolution and votes cast by the Chairperson other than as proxy holder will be disregarded because of that interest.

Dated

Signed

14.3 Member's attorney

A Member may appoint an attorney to act, or to appoint a proxy to act, at a general meeting.

14.4 Lodgement of proxies and powers of attorney

- (a) If a Member appoints a proxy or an attorney, the following documents must be given to the Company at the registered office of the Company or at the place specified for the purpose in the notice calling the general meeting:
 - (i) the proxy's appointment; and
 - (ii) if the appointment is signed by the appointor's attorney, the authority under which the form was signed or a certified copy of the authority; and
 - (iii) in the case of an attorney, the power of attorney or a certified copy of it.
- (b) The appointment of a proxy or an attorney is valid for a meeting if the appointment and any authority are given to the Company at least 24 hours before the general meeting at which the proxy is to be used.

14.5 Corporate representative

A Member that is a body corporate may appoint an individual to act as its representative at general meetings as permitted by the Act.

15. The Board

15.1 Appointment of Directors

- (a) Each Full Member is entitled to appoint one of its employees as a Director of the Company at an annual general meeting of the Company or, in the case of a new Full Member, on it becoming a Member.
- (b) Subject to clause 15.1(a), each person holding equivalent office to a Director, including as a member of the Committee under the Earlier Constitution, will hold office as a Director under this Constitution.

15.2 Number of Directors

The maximum number of Directors will be the same number as there are Full Members of the Company.

15.3 Term of Appointment

Each Director will take office on his or her appointment to the Board and, unless obliged by the Act this Constitution to retire, holds office at the pleasure of the Full Member who appointed him or her.

15.4 Chairperson

The Chairperson is also the chairperson of the Board.

15.5 Other officeholder

The Board may from among the Directors choose a deputy chairperson and treasurer.

15.6 Casual appointments

The Board may at any time appoint a duly authorised employee of a Full Member, either to fill a casual vacancy or as an addition to the existing Board, but so that the total number of Directors does not exceed the maximum numbers fixed by this Constitution. Any Director so appointed will in the ordinary course be appointed by the Full Member who at that time is unrepresented on the Board and will hold office until the next following general meeting.

16. Resignation and removal of Directors

16.1 Resignation of Directors

A Director may resign as a Director of the Company by giving written notice to the Company. Resignation will take effect on the date stated in the notice, being a date no later than 3 months after the date of the giving of the notice or, if there is no date, on the date the notice is received at the Office. The notice of resignation need not be formally accepted, and may not be rejected, by the Company.

16.2 Removal of Directors

- (a) A Director may be removed as a Director of the Company by an ordinary resolution passed at a general meeting.
- (b) On the removal of the Director and, subject to the provisions of the Act, the Company will appoint another person in his or her stead who is authorised to be a Director by the Full Member who is unrepresented on the Board.

16.3 Termination of appointment as Director

The appointment of a Director is automatically terminated if the Director:

- (a) is prohibited from being a Director by reason of an order made under the Act;
- (b) is of unsound mind or is a person whose estate is liable to be dealt with in any way under a law relating to mental health;
- (c) following an ordinary resolution of the Company, is absent without the consent of the Board from two consecutive meetings; or
- (d) following an ordinary resolution of the Company, is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of his or her interest as required by the Act.

The appointment of a Director is also automatically terminated if the Full Member who appointed that Director ceases to be a Member.

17. Powers of the Board

17.1 General powers

Subject to the Act, this Constitution and any resolution of the Company, the Directors:

- (a) will manage the business of the Company; and
- (b) may exercise all such powers of the Company that are not, by the Act or this Constitution, required to be exercised by the Company in general meeting, provided that no resolution of the Company in general meeting will invalidate any prior act of the Directors which would have been valid if such a resolution had not been made.

The appointment, action and authority of all officers (other than the Directors), contractors, agents and all committees will be subject to the supervision and control of the Board.

17.2 Board may make by-laws

- (a) The Board may, by instrument under the Act, make, vary or repeal by-laws relating to the appointment and functioning of committees and officers and general matters relating to the functioning and organisation of the Company provided that such by-laws are not inconsistent with the Act or this Constitution.
- (b) All by-laws made and for the time being in force are binding on the Members.

17.3 Borrowings

The Board may exercise all the powers of the Company to borrow money and to mortgage or charge its property, or any part of its property, and to issue securities for any debt, liability or obligation of the Company.

17.4 Cheques and other negotiable instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two Directors or in such other manner as the Board may from time to time determine.

17.5 Matters reserved for determination by the Company

The Company may in general meeting determine and specify any other matters or classes of matters, if any, that will be determined only by the Company in general meeting.

17.6 Attorneys

- (a) The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- (b) Any such power of attorney may contain provisions for the protection and convenience of persons dealing with the attorney and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

18. Proceedings of the Board

18.1 Proceedings of the Board

The Board may meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. For the purposes of the Act, each Director, on becoming a Director, consents to the use of the following technology to hold any Board meeting:

- (a) video;
- (b) telephone;
- (c) any other technology which permits each Director to communicate with each other Director; and
- (d) any combination of the technologies described in the above paragraphs.

18.2 Meetings of the Board

- (a) The Board will hold regular meetings no less frequently than three times in each Financial Year at the call of the Chairperson.
- (b) Special meetings of the Board may be called at any time by the Chairperson and will be called by the Secretary at the request of two Directors of the Board. Any requests for a special meeting must be in writing to the Secretary and will state the purpose and indicate a proposed time and place for such meeting.
- (c) At least 7 days' written notice of all regular Board meetings and at least 5 days' written notice of special meetings will be sent to the members of the Board by the Secretary.

18.3 The Chairperson

- (a) The Chairperson will preside at meetings of the Board. The Chairperson or his nominee Director will be a member ex officio of all committees.
- (b) The Chairperson may sign, with any other proper officers, delegate or agent of the Company authorised by the Board, any contracts, deeds, or other instruments which the Board has authorised to be executed, except in cases where the signing and execution of any such instrument is expressly

designated by the Board or by this Constitution, or by statute, to the Members, the Directors or some other officer, delegate or agent of the Company.

18.4 Decisions

Subject to this Constitution, questions arising at a meeting of the Board will be decided by the unanimous vote of all Directors present and voting and any such decision will for all purposes be deemed a decision of the Board.

18.5 Quorum

The quorum for any meeting of the Board is all of the Directors.

18.6 Vacancies

If there is a vacancy or vacancies in the office of a Director or Directors, the remaining Directors may act but if the number of the remaining Directors is not sufficient to form a quorum at a meeting of the Board, they may act only for the purpose of increasing the number of Directors to a number sufficient to form a quorum or for the purpose of convening a general meeting of the Company.

18.7 Directors must declare any real or potential conflicts of interest

A Director must declare to the Board an interest in any matter, whether contractual, disciplinary, financial or otherwise, in which a conflict of interest has arisen or may arise and will, unless otherwise determined by the Board, absent himself or herself from discussion of such matter and will not be permitted to vote in respect of such matter. Any such declaration must also be made when a Full Member applies for Membership in relation to any Director it proposes to appoint and on the appointment of any other or subsequent Director by that Full Member.

18.8 Board to discuss any unclear conflicts of interest

If there is uncertainty as to whether it is necessary for a Director to absent himself or herself from discussions and refrain from voting, the issue must be immediately determined by vote of the Board or, if this is not possible, the matter must be adjourned or deferred.

18.9 Requirement to leave the meeting

Notwithstanding clauses 18.7 and 18.8, the entitlement to vote, or be present, at a meeting of the Directors of any Director who has a material personal interest in a matter that is being considered at the meeting is restricted in accordance with section 195 of the Act (and every other mandatory law) as it may apply from time to time to the Company.

18.10 Director of wholly owned subsidiary

If a Director is or becomes a director of a wholly owned subsidiary of the Company, and the constitution of that subsidiary expressly authorises the director to act in the best interests of the Company that Director is taken to be acting in the best interests of the wholly owned subsidiary when he or she acts in good faith in the best interests of the Company.

18.11 Circular resolution

If all the Directors have signed a document containing a statement that they are in favour of a resolution of the Board in terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the Board held on the date on which the document was signed or, if the Directors have signed the document on different days, on the day on which the document was last signed by a Director.

18.12 Validity of acts of the Board

All acts done by any meeting of the Board or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director or that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a Director.

19. Alternate Directors

Any Director (an **Appointing Director**) may appoint an Alternate Director to exercise some or all of the Appointing Director's powers either indefinitely or for a specified period. An Alternate Director will, except with the approval of the Board, be an employee of the Member who nominated the Appointing Director.

20. Secretary

20.1 Appointment of Secretary

The Board will appoint a Secretary for such period and on such terms and conditions as the Board sees fit.

20.2 Qualifications of the Secretary

A Secretary may be a Director, as the Board sees fit, but is not required to be a Director.

20.3 Secretary's responsibilities

The Secretary will keep the minutes of the meetings of the Members and of the Board, ensure that all notices are duly given in accordance with the provisions of this Constitution or as required by the Act, keep a register of the Members and of their addresses and in general perform all duties incidental to the office of secretary of a corporation and any other duties as from time to time may be assigned to him or her by the Chairperson or by the Board.

20.4 Termination

The Board may terminate the appointment of the Secretary at any time.

21. Executive Officer

The Committee may appoint a person to the position of Executive Officer of the Company. The Executive Officer will not be a member of the Board. The Board may delegate to the Executive Officer such functions as it decides from time to time. Despite anything else in this Constitution the person so appointed will be employed

by, and entitled to remuneration and benefits from, the Company in accordance with the terms of his or her appointment and may be a secondee of a Member.

22. Committees

22.1 Establishment of committees

The Board may create one or more advisory boards or committees, in the latter case consisting of any number of Directors and such other persons as the Board thinks fit. Any such committee or committees may be standing committees of the Board covering membership, financial, safety, technical, environmental, regulatory and other matters or ad hoc committees formed to deal with a particular issue or issues.

22.2 Powers of a committee

A committee to which powers have been delegated by the Board must exercise the powers of the committee in accordance with any direction of the Board and, absent any particular direction by the Board, in accordance with the provisions of this Constitution as if it were constituted and exercising the powers of the Board.

23. Seal

23.1 Safe custody

The common seal of the Company will be retained at the registered office of the Company by the Secretary.

23.2 Use of common seal

The common seal of the Company must be used only by the authority of the Board and every document to which the common seal for the Company is affixed must be signed by a Director and be countersigned by another Director or the Secretary.

24. Inspection of records

A Full Member may inspect the books of the Company:

- (a) on the written authority of two or more Directors; or
- (b) by a resolution passed at a general meeting.

25. Accounts and financial records

25.1 Accounts

The Company will maintain an account or accounts in the name of the Company at such bank or banks as may be determined by the Board. Such accounts will be operated on the signature of any one or more of the Chairperson, the Directors, the Secretary and any other designated officer or employee of the Company authorised by the Board.

25.2 Financial records

The Company must keep written financial records (in hard or electronic format) that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) will enable true and fair financial statements to be prepared and audited.

These financial records must be retained for 7 years after the transactions covered by the records are completed.

25.3 Preparation of financial reports and directors' report

The Company must prepare a financial report and directors' report for each financial year in accordance with the Act. The financial report must include a profit and loss statement, a balance sheet and a statement of cash flows, together with any explanatory notes.

25.4 Appointment of auditor

The Members must at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting and their appointment, rights and duties will be regulated by the Act. The auditors' remuneration will be set by the Board.

25.5 Financial reports must be audited

The financial report prepared under clause 25.3 must be audited by the auditor or auditors appointed under clause 25.4 in accordance with the provisions of the Act.

25.6 Copy of reports to be sent to members

The audited financial report and directors' report prepared under clause 25.3 or a concise report (as that term is described in section 314(2) of the Act) must be sent to Members by the earlier of 21 days before the annual general meeting and 4 months after the end of each Financial Year.

26. Notices

26.1 Service of notices

A notice (including a notice of general meeting) may be served by the Company on any Member:

- (a) personally;
- (b) by post to the address for the member in the register of members or any alternative address nominated by the member; or
- (c) by sending it to the electronic address nominated by the Member.

26.2 Time of service of notices

Any notice if served:

- (a) by post, will be deemed to have been served on the day following that on which the envelope or wrapper containing the notice is posted and in proving such service it will be sufficient to prove that the notice was properly addressed and posted;
- (b) by electronic mail, will be deemed to have been served at the time the notice becomes accessible to the recipient but only if the time the notice becomes accessible is no later than 24 hours after the time the notice was sent as recorded by the sender; and
- (c) in person, will be deemed to have been served when delivered to the addressee;

but if the delivery or receipt is on a day that is not a Business Day or is after 4:00pm (addressee's time), it is deemed to have been received at 9.00am on the next Business Day.

26.3 Counting of days

Subject to the Act, where a specified number of days' notice or notice extending over any period is required to be given, both the day of service and the day upon which such notice will expire are included in such number of days or other period.

27. Indemnity and insurance

27.1 Definition

In this clause **officer of the Company** includes any person who is or has served in the capacity of Director, Secretary or other officer of the Company.

27.2 Indemnity against proceedings

Every person who is or has been an officer of the Company or any of its related bodies corporate is indemnified, to the maximum extent permitted by law, out of the property of the Company against any liabilities for costs and expenses incurred by that person:

- (a) in defending any proceedings relating to that person's position with the Company, whether civil or criminal, in which judgment is given in that person's favour or in which that person is acquitted or which are withdrawn before judgment; and
- (b) in connection with any application in relation to any proceedings relating to that person's position with the Company, whether civil or criminal, in which relief is granted by a court to that person under the Act.

27.3 Indemnity against liabilities

Every person who is or has been an officer of the Company or its related bodies corporate is indemnified to the maximum extent permitted by law out of the property of the Company against any liability incurred by the person in his or her capacity as

an officer of the Company to another person (other than the Company or its related bodies corporate) unless the liability arises out of conduct involving a lack of good faith.

27.4 Insuring officers of the Company

The Company may pay a premium for a contract insuring a person who is or has been an officer of the Company against:

- (a) any liability incurred by that person as such an officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of section 182 or 183 of the Act; and
- (b) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position as an officer of the Company, whether civil or criminal and whatever the outcome.

27.5 Company may make separate contracts

The Company may confirm the indemnities in clauses 27.2 and 27.3 by separate contract with, or on behalf of, one or more of the persons indemnified.

28. Affiliation and membership of other similar organisations

The Company may in general meeting determine to affiliate with or become a member of, or to accept affiliation or membership of, any company or industry association having similar or like interests to the Company.