

CONSTITUTION



Australian Investment Council Limited

19 November 2015

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1. Defined terms and interpretation

1.1. Defined Terms

In this Constitution:

Applicant means a person eligible to become a Member under **clause 13** that applies to become a Member;

Association means Australian Investment Council Limited ACN 056 885 708;

Board means the board of the Association from time to time;

Business Day means a day on which banks are open for business in Sydney excluding Saturday, Sunday or public holiday;

CEO means the chief executive officer of the Association from time to time appointed by the Board in accordance with this Constitution;

Chair means the chair of the Board from time to time, elected or appointed (as the case may be) in accordance with this Constitution;

Constitution means this constitution;

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

Deputy Chair means the deputy chair of the Board from time to time, elected or appointed (as the case may be) in accordance with this Constitution;

Director means a member of the Board from time to time, elected or appointed (as the case may be) in accordance with this Constitution;

Financial Year means the financial year beginning on 1 July in one year and ending on 30 June in the following year;

Individual Member means a person being an individual who has been admitted as a Non-Investor Member;

Industry means the investment of private equity and venture capital funds primarily in unlisted companies;

Investor Member means a person that is not an individual which has been admitted to Membership as an Investor Member in accordance with **clause 13.1**;

Investor Member Representative means a person appointed by an Investor Member in accordance with **clause 14.1**;

Member means a person who has been admitted to Membership as an Investor Member or a Non-Investor Member, but does not include Member Representatives;

Membership means membership of the Association;

Membership Classes means the classes of Membership to which an Applicant may be admitted which are set out in **clause 12.1**;

Membership Sub Categories means the sub categories of Non-Investor Member to which an applicant may be admitted in accordance with **clause 13.2(a)**;

Member Representative means a person appointed by a Member in accordance with **clause 14.1** and includes an Investor Member Representative;

Non-Investor Member means a person admitted to Membership as a Non-Investor Member in accordance with **clause 13.2**;

Office means the registered office of the Association from time to time;

Representative, in relation to a body corporate, means a representative of the body corporate appointed under section 250D of the Corporations Act;

Secretary means any person appointed to perform the duties of the secretary of the Association; and

Witness has the meaning given in **clause 20.1(b)**.

1.2. Interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this Constitution:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes every other gender;
- (c) a reference to a person includes a corporation and any other legal entity;
- (d) where a term is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a clause is a clause of this Constitution;
- (f) a reference to a document is to that document as amended or varied;
- (g) a reference to any legislation includes any subordinate legislation and amendments;
- (h) conduct includes any act, omission, representation, statement or undertaking whether or not in writing;
- (i) a reference to 'writing', 'written' and 'in writing' includes any mode of representing or reproducing words in a visible form;
- (j) a reference to 'including', or similar words, does not limit what else might be included;
- (k) any words defined in the Corporations Act but not defined in this Constitution have the same meanings as expressed in the Corporations Act;
- (l) a reference to posting includes any form of electronic communication;
- (m) a reference to ballot papers includes electronic papers; and
- (n) a reference to a general meeting means a general meeting of the Association.

2. Name

The name of the Association is Australian Investment Council Limited.

3. Objects

The objects of the Association are:

- (a) to represent the interests of Members to state and federal governments, commissions, enquiries, regulatory authorities, industry associations and professional associations;
- (b) to promote the recognition of the Industry as a professionally managed and ethical sector of the Australian investment community, which is worthy of support by current investors and new participants;
- (c) to provide for the examination and discussion of the Industry in Australia;
- (d) to promote fellowship and provide a forum for the exchange of ideas and views amongst the Members and business community at large;
- (e) to assist Members develop and improve their skills in relation to the Industry's activities, and become knowledgeable about issues which affect the Industry; and
- (f) to collect and distribute information with respect to the Industry.

4. Powers

The Association shall have the following powers to be exercised solely to further its objects and not otherwise:

- (a) to purchase, take on lease or in exchange, hire or otherwise acquire any land, building, easement or property, either real or personal, and any rights or privileges which may be convenient for the purposes of any of the objects of the Association;
- (b) to buy, sell and deal in all kinds of apparatus and all kinds of provisions required by the Members or persons frequenting the Association's premises;
- (c) to sell, let, mortgage, charge, dispose of, turn into account, improve, manage, exchange or otherwise deal with all or any of the undertakings, property or assets of the Association;
- (d) to appoint, employ, engage, remove or suspend such officers, employees, contractors, consultants, volunteers and other persons as may be necessary or convenient;
- (e) to borrow and raise money on such terms and on such security as may be necessary or convenient;
- (f) to enter into any arrangements with any government authorities;
- (g) to subscribe to, become a member of, cooperate or amalgamate with any other association or organisation whose objects are similar to those of the Association. However, the Association will not subscribe to or support with its funds any association or organisation which does not prohibit the distribution of its income and property amongst members to an extent at least as great as that imposed on the Association by virtue of **clause 5**.
- (h) to construct, improve, maintain, develop, work, manage, carry out, alter or control any houses, buildings, shelters or ground works which may, directly or indirectly, advance the Association's interests;
- (i) to invest and deal with funds of the Association which are not immediately required in such manner as the Association thinks fit;
- (j) to borrow, raise or secure the payment of money in such manner as the Association may think fit and secure the same or the repayment or performance of any debt, liability, contract, guarantee or other arrangement incurred or to be entered into by the Association;
- (k) to take or hold mortgages leases and charges to secure payment of any part of the Association's property sold by the Association, or any money otherwise due to the Association;
- (l) to transfer all or any part of the property, assets, liabilities and engagements of the Association to any one or more of the companies, institutions, societies or companies with which the Association is authorised to amalgamate;
- (m) to make donations for patriotic or charitable purposes, or make a gift of property;
- (n) to make draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (o) to make by-laws, rules and regulations in regard to the affairs and management of the Association, and to formulate and issue codes of conduct and valuation guidelines to be followed by Members;
- (p) to pay all expenses preliminary or incidental to the incorporation and registration of the Association under any state or federal law;
- (q) to do any act matter or thing which the Association is authorised to do under any law;
- (r) to enter into such commercial or other transactions and to provide services (whether with or for a Member or with or for any other person) as may seem desirable to the Association for the purpose of promoting the Association's objects or affairs;
- (s) to do all or any above things as principals agents trustees or otherwise and buy through trustees agents or otherwise and either alone or in conjunction with others;
- (t) to take such steps by personal or written appeal, public meetings or otherwise as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Association by way of donations, annual subscriptions, dues and levies or otherwise; and

- (u) to do all such other things as are incidental or conducive to the attainment of the above objects of the Association, including those set forth in section 124(1) of the Corporations Act.

5. Income and property

5.1. No Transfer to Members

The income and property of the Association shall be applied solely towards the promotion of the objects of the Association listed in **clause 3**, and no portion thereof shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise, to the Members.

5.2. Payments & Gifts

Clause 5.1 shall not prevent the making of payments or the provision of gifts in good faith to any officers, employees, contractors, consultants or volunteers of the Association or to any Member in any of the following circumstances:

- (a) in return for any services actually rendered to the Association;
- (b) where a gift is given as a gratuity for any services rendered to the Association;
- (c) where payment is made for goods supplied in the ordinary course of business;
- (d) where payment is in respect of reasonable expenses of any such person attending an event hosted by the Association or any Board or Member meetings;
- (e) the payment of interest at a rate not exceeding the rate for the time being fixed for the purpose of this paragraph by the Constitution on money the Association has borrowed from any such person; or
- (f) where payment is in respect of reasonable and proper rent for premises demised or let by any such person to the Association.

5.3. No Fees to Members

Subject to **clause 5.2** and apart from any fee paid to any independent chairperson of the Board appointed from time to time, no Director shall be appointed to any salaried office of the Association or any office of the Association paid by fees. For clarity, no remuneration or other benefit in money or money's worth shall be paid or given by the Association to any Director, except repayment of out-of-pocket expenses, interest at the rate stated on money lent or reasonable and proper rent for premises demised or let to the Association.

6. Limitation of liability

The liability of the Members is limited to the amount of the guarantee provided by them pursuant to **clause 7**.

7. Guarantee

Every Member (or ex-member which was a Member during the previous Financial Year) undertakes to contribute such amount as may be required, not exceeding two dollars (\$2.00), to the property of the Association in the event of the Association being wound up.

8. Dissolution

If there remains any property after winding up or dissolution of the Association, then the property shall not be paid to or distributed among the Members, but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Association and which prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Association pursuant to **clause 5**. The institution or institutions will be determined by the Members at or before the time of dissolution, or by application to the Supreme Court.

9. Replaceable rules

The replaceable rules in the Corporations Act do not apply to the Association and are displaced by this Constitution.

10. Accounts

Accounts will be kept detailing funds received and expended by the Association, as well as the property, credits and liabilities of the Association. These accounts shall be open for inspection by Members, subject to any reasonable restrictions as may be imposed by the Board. At least once a year the accounts of the Association shall be audited by one (1) or more properly qualified auditors who shall report to the Members in accordance with the Corporations Act.

11. Members

The subscribers to the Constitution and such other persons as the CEO admits to Membership in accordance with this Constitution are Members.

12. Types of membership and distinction

12.1. Classes of Membership

There will be two Membership Classes:

- (a) Investor Members; and
- (b) Non-Investor Members.

12.2. Amendment to Membership Classes

The Board may in its absolute discretion amend the eligibility criteria for the Membership Classes in **clause 13** by written notice to the Members from time to time.

13. Eligibility

13.1. Investor Member

Subject to the other provisions of this Constitution (including **clause 12.2**), a person not being an individual is eligible to be admitted to Membership as an Investor Member if its business, in the opinion of the Board, includes the management of funds in connection with the Industry.

13.2. Non-Investor Members

Subject to the other provisions of this Constitution (including **clause 12.2**):

- (a) any other person is eligible to be admitted to Membership as a Non-Investor Member and to one of the Membership Sub Categories (if any) if, in the opinion of the Board, such person:
 - (i) is engaged in a profession or trade which provides services to the Industry including lawyers, accountants, stock brokers and bankers; or
 - (ii) is a person or a member of a class of persons whom, in the opinion of the Board, is a fit and proper person to be a Member and will enhance the Association.
- (b) The CEO may create Membership Sub Categories in their absolute discretion.

14. Member representatives

14.1. Appointment

Each Member may appoint a number of persons, as determined by the Board from time to time, to act as its representative or representatives. The manner in which such appointments shall be made, the terms of such appointment and the subscriptions, dues and levies payable in relation to such representatives shall be determined by the Board in its absolute discretion.

14.2. Rights

Each Member Representative appointed under **clause 14.1** is subject to the terms of this Constitution that relate to Member Representatives and may attend general meetings of the Association, but may not speak or vote on any resolutions unless the Member Representative represents a Member by proxy, attorney or as its Representative and has been validly appointed.

15. Application for membership

15.1. Forms

All applications for Membership must be made in writing in such form as may be prescribed by the CEO.

15.2. Admission to Membership Class/Refusal

The CEO may in their absolute discretion admit an Applicant that the Board has determined is eligible to be admitted to Membership under **clause 13** to any of the Membership Classes, or Membership Sub Categories, or decline to admit any Applicant to Membership.

15.3. Notice of Acceptance

When an Applicant has been accepted for Membership, the Secretary shall, as soon as practicable after that time, send to the Applicant written notice of its acceptance and a request for payment of the application fee (if any) and first annual Membership fee pursuant to this Constitution. Upon payment of all applicable fees the Applicant becomes a Member.

16. Annual fees

- (a) The Board shall determine all subscriptions, dues and levies (including application and annual Membership fees).
- (b) Subscription, dues and levies (including application and annual Membership fees) may be set at different rates for Investor Members and Non-Investor Members and for the different Membership Sub Categories.
- (c) Members must pay all subscriptions, dues and levies (including application and annual Membership fees) to the Association no later than thirty (30) days after receipt of a tax invoice from the Association.
- (d) A Member shall not be entitled to exercise any of the rights and privileges of Membership until they have paid all monies due and payable by them to the Association.
- (e) In the event that a Member resigns or their Membership is terminated or suspended, all subscriptions, dues and levies (including application and annual Membership fees) shall be due and payable in full for the Financial Year during which resignation, termination or suspension of Membership occurs. If the Member has paid its subscriptions, dues and levies in full, it shall not be entitled to a refund of any payment or part thereof.

17. Non transferable

The rights and privileges of a Member are not transferable or transmissible.

18. Conduct of members

18.1. Members' Conduct

Members must conduct themselves in accordance with all by-laws, codes of conduct and other pronouncements of sound practice that are adopted by the Board. For clarity, the Board may make pronouncements to prevent illegal or dishonourable practices, and may prohibit whatever acts it thinks fit for such prevention.

18.2. Investigations

The Board may, in its sole discretion, investigate the conduct of any Member and provide penalties as set out in **clause 20** for those Members who wilfully refuse or neglect to comply with any by-law, code of conduct or other pronouncement that is adopted by the Board.

19. Cessation of membership

19.1. Automatic Cessation

A Member automatically ceases to be a Member if any of the following occurs:

- (a) an application is made to a court for an order appointing a liquidator, provisional liquidator, official manager, receiver, receiver and manager or similar officer in respect of a Member;
- (b) the Member enters into or resolves to enter into a scheme of arrangement or composition with or assignment for the benefit of all or any class of creditors;
- (c) a court order or an application is made for the Member to be wound up;
- (d) the Member resolves by special resolution to be wound up or otherwise dissolve itself;
- (e) the Member is an Individual Member, and becomes bankrupt or insolvent or makes any arrangement or compromise with their creditors generally;
- (f) the Member is expelled in accordance with this Constitution; or
- (g) the Member ceases to satisfy the eligibility criteria to be admitted to any of the Membership Classes (as determined by the CEO in their absolute discretion). If a Member ceases to satisfy the criteria for the Membership Class or Membership Sub Category (if applicable) to which the Member has been admitted, the CEO may, in their absolute discretion, remove the Member from that Membership Class or Membership Sub Category and admit the Member to one of the other Membership Classes or Membership Sub Categories.

19.2. Resignation

- (a) A Member may resign from the Association by giving the Board at least thirty (30) days' written notice.
- (b) A Member having given notice of their resignation shall continue in Membership, in all respects, until the expiration of the Financial Year and shall be liable for all subscriptions, dues and levies (including application and annual Membership fees) owing or otherwise payable by that Member for that Financial Year or for such portion thereof as may be determined by the CEO in their absolute discretion.

19.3. Claims by a Member

A Member who ceases to be a Member for any reason is taken to have automatically waived any entitlement it may have to the Association's funds, property and/or assets.

20. Expulsion of members

20.1. Investigation and Explanations

- (a) The Board has the power at any time to investigate the conduct or alleged misconduct of any Member where the Board, acting in good faith, has reasonable grounds to believe that the Member (or any of its officers, employees or Member Representatives) has acted in a manner which is unbecoming of a Member or prejudicial to:
 - (i) the interests or objects of the Association and its Members; or
 - (ii) the good name of the Association and its reputation for promoting and retaining high standards of business conduct and professional competence (examples of such conduct including any action which may be in breach of by-laws, codes of conduct or other pronouncements adopted or made pursuant to **clause 18**).

- (b) The Board, acting reasonably and in good faith, may require a Member to give an explanation of any conduct or alleged conduct of such Member (or its officers, employees and Member Representatives). In addition, the Board may, acting reasonably and in good faith, require a Member to provide information related to the subject matter under investigation. For clarity, this may include reasonable access to officers, employees, agents, Representatives or other persons associated with the Member who may have information concerning the alleged conduct (**Witnesses**). The Member must use its best efforts to ensure the Board, or any person or committee appointed by the Board, has reasonable access to the Witnesses during the course of the investigation.

20.2. Consequences

- (a) If a:
 - (i) Member or Member Representative wilfully refuses or neglects to comply with the provisions of this Constitution, by-laws, codes of conduct or other pronouncements adopted or made pursuant to **clause 18**, or is guilty of any conduct which, in the opinion of the Board acting reasonably and in good faith, is unbecoming of a Member or prejudicial to:
 - A. the interests or objects of the Association and its Members;
or
 - B. the good name of the Association and its reputation for promoting and retaining high standards of business conduct and professional competence (examples of such conduct including any action which may be in breach of by-laws, codes of conduct or other pronouncements adopted or made pursuant to **clause 18**); or
 - (ii) Member fails to pay any amount payable by it to the Association within sixty (60) days of receipt of an invoice from the Association, the Board may, in each case by resolution at a meeting of the Board censure, suspend or expel the Member or Member Representative. If a Member Representative is expelled by the Board, then, subject to this **clause 20.2(a)**, such expulsion shall not affect the ability of the relevant Member to appoint a substitute Member Representative. For clarity, a Member Representative who is expelled pursuant to this **clause 20.2(a)** will not be eligible for appointment (iii) as a substitute Member Representative.
- (b) At least twenty-one (21) Business Days before any meeting of the Board at which a resolution pursuant to **clause 20.2(a)** in relation to a Member is proposed to be passed, the Member will be given notice of:
 - (i) the meeting and of the allegations against such Member;
 - (ii) the intended resolution concerning the Member; and
 - (iii) the Member's right, prior to the passing of the intended resolution, to present an explanation or defence as such Member may think fit.

20.3. Limitation of Liability of Board

To the maximum extent permitted by law, each Member:

- (a) acknowledges that no matter or thing done or omitted to be done by the Board (including the exercise of its powers in this **clause 20**) subjects the Board or Association to any liability; and
- (b) releases the Association and Directors from any such liability.

21. General meetings

21.1. Timing

The timing of an annual general meeting will be in accordance with the Corporations Act.

21.2. Extraordinary General Meetings

Any general meeting that is not the annual general meeting will be an extraordinary general meeting. The Board may resolve to convene an extraordinary general meeting in its absolute discretion.

22. Requisitioned general meeting

22.1. Requisition

The Board must convene an extraordinary general meeting of Members upon a requisition of Members in accordance with the Corporations Act.

22.2. Notice of requisition

- (a) The requisition must be in writing and:
 - (i) state the objects of the meeting and state any resolution to be proposed at the meeting;
 - (ii) state the names of and be signed by or on behalf of requisitioning Members; and
 - (iii) be deposited with the Board.
- (b) The requisition may consist of several documents in like form, each signed by or on behalf of one or more of the requisitioning Members.

22.3. Failure to convene a meeting

If the Board has not proceeded to convene a meeting within the time limits under the Corporations Act, Members with more than fifty percent (50%) of the vote of all of the requisitioning Members may themselves convene a meeting subject to **clauses 22.5** and **26.2**. This meeting must not be held later than three (3) months from the date of deposit of the requisition.

22.4. Convening of meetings

A meeting convened by the requisitioning Members must be convened in substantially the same manner as that in which meetings of Members are convened by the Board and otherwise in accordance with the Corporations Act.

22.5. Notices

In the case of a meeting convened by the requisitioning Members at which a special resolution is proposed, the meeting will be deemed not to be duly convened if the requisitioning Members do not give such notice of the special resolution as required by the Corporations Act.

22.6. Expenses

Any reasonable expenses incurred by the requisitioning Member or Members by reason of the failure of Board to give notice under **clause 22.5** of a meeting must be repaid to the requisitioning Member or Members by the Association.

23. Notices of general meetings

23.1. Notices

- (a) General meetings shall be convened by giving not less than twenty-one (21) days' notice to every Member and Member Representative and the auditor of the Association in writing specifying:
 - (i) the place;
 - (ii) the day and the hour of the meeting; and
 - (iii) the general nature of the business to be transacted at the meeting and any other matters required by the Corporations Act.
- (b) The non-receipt of the notice by any Member or its Member Representatives does not invalidate the proceedings at such general meeting.

23.2. Member Resolutions

Subject to the Corporations Act, any Member having a resolution to submit to a general meeting, must give written notice of such resolution to the Association not less than two (2) months prior to the date of the meeting.

24. Annual general meetings

24.1. Ordinary Business

The ordinary business of an annual general meeting shall be:

- (a) to receive and consider the accounts and balance sheets of the Association, the report of the Board, and the report of the auditors;
- (b) to declare the appointment of Directors in accordance with this Constitution in place of those who are retiring at that annual general meeting; and
- (c) to appoint an auditor.

24.2. Further Business

Special business of which notice has been given to the Members in accordance with this Constitution may also be transacted at annual general meetings.

24.3. Special Business

- (a) All business is deemed to be special business other than ordinary business of the annual general meeting as described in **clause 24.1**.
- (b) Notwithstanding **clause 23.2** and **clause 24.2**, an annual general meeting may also consider special business raised from the floor provided that such special business is not objected to by more than five (5) Members.

25. Admission to and representation at general meetings

25.1. Admission to General Meetings

- (a) The chair of a general meeting may refuse admission to a person, or require that person to leave and remain out of the meeting, if that person:
 - (i) is not:
 - A. a Member or a proxy, attorney or Representative of a Member;
 - B. a Member Representative;
 - C. a Director;
 - D. the auditor of the Association; or
 - E. a person requested by the Board or the Chair to attend.
- (b) A person requested by the Board or the Chair to attend a general meeting is entitled to be present, whether the person is a Member or not.

25.2. Representation at General Meetings

- (a) Subject to this Constitution, each Member entitled to vote at a meeting of Members may vote:
 - (i) in person or, where a Member is a body corporate, by its Representative;
 - (ii) by proxy or, if the Member is entitled to cast two or more votes at the meeting, by not more than two (2) proxies; or
 - (iii) by not more than two (2) attorneys.
- (b) A proxy, attorney or Representative may be a Member of the Association but does not have to be a Member.
- (c) A proxy, attorney or Representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (d) Unless otherwise provided in the Corporations Act or in the appointment, the appointment of a proxy, attorney or Representative will be taken to confer authority:
 - (i) to agree to a meeting being convened by shorter notice than is required by the Corporations Act or by this Constitution;
 - (ii) to speak to any proposed resolution on which the proxy, attorney or Representative may vote;
 - (iii) to demand or join in demanding a poll on any resolution on which the proxy, attorney or Representative may vote;
 - (iv) even though the appointment may refer to specific resolutions and may direct the proxy, attorney or Representative how to vote on those resolutions:
 - A. to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - B. to vote on any procedural motion, including any motion to elect the Chair, to vacate the Chair or to adjourn the meeting;
and
 - C. to act generally at the meeting; and
 - (v) even though the appointment may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.
- (e) The chair of a general meeting may require any person purporting to act as a proxy, attorney or Representative to establish to the satisfaction of the chair that they are the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.

- (f) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (g) A proxy or attorney may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy or attorney, and the original or a certified copy of the power of attorney or other authority (if any) under which the instrument is signed, are received:
 - (i) at the Office, the fax number at the Office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting; and
 - (ii) by the time specified in the notice of meeting.
- (h) The Association must include with a notice of meeting a proxy form which must provide for the appointer:
 - (i) to vote for or against (or, if the Board determines, abstain from voting on) each resolution; and
 - (ii) to appoint proxies of the appointer's choice, but may specify who is to be appointed as proxy if the appointer does not choose.

26. Quorum

26.1. Minimum Investor Member Requirement

No business shall be transacted by any general meeting unless a quorum of Members entitled to vote is present. Five (5) Investor Members present by proxy, attorney or Representative shall constitute a quorum.

26.2. Requirement Not Met

If within half an hour from the time appointed for a general meeting a quorum is not present, the meeting shall be dissolved if requisitioned under **clause 22.3**. In any other case, the meeting will stand adjourned to the same day in the next week at the same time and place (**Postponed Meeting**). If within fifteen (15) minutes from the scheduled commencement of the Postponed Meeting a quorum is again not present, the Members present in person, or by proxy, attorney or Representative shall constitute a quorum.

27. Chair of the board

27.1. Presence at General Meeting

The Chair shall preside as chair of every general meeting, and in his absence the Deputy Chair shall preside as chair of that meeting. In the absence of both the Chair and Deputy Chair, a chair shall be appointed by the meeting.

27.2. Right to Adjourn

The chair of a general meeting may, at any meeting at which Members present with a majority of votes agree and a quorum of Members entitled to vote is present, adjourn the meeting. No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten (10) days or more notice of the adjourned meeting shall be given as in the case of the original meeting. It shall not otherwise be necessary to give any notice of any adjournment or of the business to be transacted at an adjourned meeting.

28. Right to demand a poll

28.1. Requirements for a Demand

At a general meeting a resolution put to the vote at the meeting shall be decided on a show of hands unless a poll is (before or on declaration of the result of the show of hands) demanded by:

- (a) the chair of the meeting;
- (b) at least five (5) Members entitled to vote on the resolution; or
- (c) Members with at least 5% of the votes that may be cast on the resolution on a poll.

28.2. Procedure without Poll

Unless a poll is so demanded, a declaration by the chair of the meeting that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of proceedings of the Association shall be evidence of that fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

28.3. Withdraw

The demand for a poll may be withdrawn.

28.4. Poll Procedure

If a poll is duly demanded at a general meeting, it shall be taken in such manner as the chair of the meeting directs and, unless the meeting is adjourned, the result of the poll will be a resolution of the meeting. For clarity, poll votes may be given personally, or by proxy, attorney or Representative.

28.5. Timing

A poll demanded at a general meeting on the election of a chair of the meeting or on a question of adjournment shall be taken at the time of the demand. A poll demanded on any other question shall be taken at such time as the chair of the meeting directs.

29. Proxy

29.1. Form of Proxy

An instrument appointing a proxy shall be in a form approved by the Board and otherwise in accordance with the Corporations Act.

29.2. Appointment will Endure

A vote given in accordance with the terms of an instrument appointing a proxy or attorney shall be valid notwithstanding:

- (a) death;
- (b) unsoundness of mind; or
- (c) revocation by the Member,

unless written notice of the matter is received by the Association at the Office before the commencement of a meeting, or adjourned meeting, at which the proxy or attorney votes or is authorised to vote.

30. Voting

30.1. Voting Rights

Subject to this Constitution:

- (a) at a general meeting, on a show of hands, every Member present has one (1) vote;
- (b) on a poll at a general meeting (or otherwise in connection with the election of Directors):
 - (i) every Non-Investor Member has one (1) vote;
 - (ii) every Investor Member has seven (7) votes.

30.2. Good Standing Requirement

No Member or proxy is entitled to vote at any general meeting unless all moneys presently payable by it or its appointer, as applicable, to the Association have been paid.

30.3. Majority

All resolutions at general meetings shall be determined by a simple majority of the votes validly cast by Members who are entitled to cast a vote on the resolution except in the case of special resolutions or as otherwise provided in this Constitution.

30.4. Casting Vote

In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the general meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

31. Board

31.1. Structure

Unless and until otherwise determined by a special resolution of the Association and subject to **clause 31.4**, the Board shall consist of not more than fifteen (15) and not less than six (6) Individual Members or Member Representatives. The maximum of 15 Directors comprises a maximum of fourteen (14) Directors and, where the invitation referred to in **clause 31.7** is accepted, one additional position filled by the immediate past Chair in an ex-officio capacity. In addition to the fifteen (15) Directors, additional persons, including those persons filling the unelected positions of CEO and Secretary, may be invited by the Chair to attend Board meetings but will not be entitled to vote at such Board meetings.

31.2. Eligibility

Directors must be Individual Members or Member Representatives. Individual Members or Member Representatives of Non-Investor Members must not in aggregate occupy more than forty percent (40%) of the Director positions filled from time to time. If the number of Investor Member Representatives elected or appointed as Directors under this Constitution is not equal to or greater than sixty percent (60%) of the number of Director positions filled from time to time then, subject to **clause 31.1**, the maximum number of Directors will be reduced by eliminating such number of Director positions occupied by persons who are Individual Members or Member Representatives of Non-Investor Members (by eliminating first, those appointed under

clause 40.1 or **40.2** in order of shortest to longest serving and second, those elected in order of the lowest to highest votes received) until the number of Director positions held by persons who are Individual Members or Member Representatives of Non-Investor Members does not exceed forty percent (40%) of all Director positions then held.

31.3. Term

Subject to **clauses 31.8(b), 31.9, 40.3** and **44.2**:

- (a) an elected Director shall hold office for two (2) years from the annual general meeting at which their election is declared; and
- (b) a Director appointed pursuant to **clause 40.2** shall hold office for a period of one (1) or two (2) years from the last annual general meeting, as resolved by the Board upon appointing the Director.

31.4. Mandated Withdrawal

Notwithstanding **clause 31.1**, if a Director who is an Investor Member Representative ceases to be an Investor Member Representative and where such cessation causes the percentage of Director positions held by persons who are Individual Members or Member Representatives of Non-Investor Members to exceed forty percent (40)% that Director must retire as a Director effective immediately. The Board must appoint another Investor Member Representative to the Board to fill the casual vacancy in accordance with **clause 40.1**.

31.5. Office Bearers

The office bearers of the Association shall consist of a Chair, Deputy Chair and treasurer. Each office bearer must be a Director. The treasurer must be a Member or a Member Representative. The Chair and Deputy Chair must each be an Investor Member Representative.

31.6. Appointment of Office Bearers

The office bearers of the Association pursuant to **clause 31.5** will be elected by the Board. The appointments are effective at the conclusion of the Board meeting at which such election occurs and those elected replace the person previously serving in such capacity with immediate effect, without liability to that person or the Association. Each office bearer will hold office for one year.

31.7. Past Chair

The immediate past Chair shall be invited to be an ex-officio Director in the year immediately following their retirement as Chair.

31.8. Board Elections

- (a) For the first election procedure to be conducted after the adoption of this Constitution:
 - (i) all Directors must retire, but are eligible for re-election.
 - (ii) pursuant to this Constitution, the Members will elect the Directors.
- (b) Notwithstanding **clause 31.3**, at the first election procedure to be conducted after the adoption of this Constitution, the candidates who are elected with the most number of votes shall have a term of two (2) years and those elected with the least number of votes shall have a term of one (1) year so that fifty percent (50%) of the elected Directors (rounded up in the event of a fraction) are elected with a term of two (2) years and the remainder with a term of one (1) year. For example, if thirteen (13) Directors are elected, seven (7) shall be appointed with a term of two (2) years and six (6) with a term of one (1) year.
- (c) For all subsequent election procedures:
 - (i) elections will be held to appoint Directors to the Board in accordance with **clause 31.3**; and

- (ii) those Directors whose terms have expired in accordance with **clause 31.3** must retire, but are eligible for re-election in accordance with this Constitution.

31.9. Board Positions Available for Election

Subject to **clause 31.8(a)**, the sitting Board will set in its absolute discretion the number of Director positions available for election, provided that the requirements of **clauses 31.1, 31.2** and **40.2** are complied with.

31.10. Board Election by Agreement

The Board may at any time by unanimous agreement determine that it is appropriate to have an election for all positions on the Board and may convene an extraordinary general meeting for this purpose. The Directors shall be entitled to be re-elected and shall not be deemed to have retired until such time as the new Directors have been appointed. Such appointees to the Board shall hold office until the next annual general meeting at which time the provisions of **clause 31.8(c)** shall apply.

32. Election procedures

32.1. Returning Officer

At least two (2) months prior to the annual general meeting, the Board must appoint a returning officer for the upcoming Board elections. The returning officer must be approved by the Chair and shall not be an Investor Member or Investor Member Representative. If at any time the appointed returning officer becomes unable or unwilling to act, then the Board must appoint a replacement as soon as possible. The Board must:

- (a) supply the returning officer with a copy of this Constitution; and
- (b) comply with all reasonable directions given by the returning officer in connection with the preparation for or conduct of elections in accordance with this Constitution and the Corporations Act.

32.2. Responsibility

The returning officer is not liable in connection with anything done concerning elections or the preparation for elections, except to the extent (if any) that the returning officer has not acted in good faith.

32.3. Register

As soon as possible after the end of August, the Secretary must bring the register of Members completely up-to-date as at 31 August, including noting Members who as at that date have not paid their requisite subscriptions, dues and levies (including application and annual Membership fees), and give the returning officer access to that register.

33. Nomination requests

At least two (2) months prior to the annual general meeting, the returning officer must supervise the distribution by the Association to all Members of a nomination request form for the upcoming Board elections.

34. FORM OF NOMINATION REQUEST

34.1. Form Requirements

- (a) Subject to this Constitution, the nomination request form must be in the form determined by the returning officer, and call for nominations for the upcoming Board elections. In addition, it must provide information as to how the elections are to be conducted and how nominations may be made.
- (b) The nomination request form must call for nominations for the positions of Director. Only Members and Member Representatives may be nominated for the position of Director.
- (c) The nomination request form must invite candidates to provide any notes relevant to their candidature which they wish to have circulated to Members. The notes must not exceed one hundred (100) words, and must indicate whether the candidate is an Individual Member or a Member Representative of an Investor Member or Non-Investor Member.

34.2. Closing Date

The returning officer must set a closing date and time for nominations. This date must be at least two (2) weeks after the date of posting the nomination request form to Members, and this date must be clearly stated on the nomination request form.

34.3. Electronic Processes

Nomination request forms may be sent and nominations may be made via any means approved by the returning officer, including the use of any electronic or online process or procedures that utilise the internet. The returning officer may stipulate procedures and conditions as to the manner in which nomination request forms and nominations may be sent and received and may in their absolute discretion disqualify nominations received which they consider do not comply with the procedures and conditions.

35. Nominations for board

35.1. Prohibition on Self-Nomination

A candidate may not nominate themselves.

35.2. Signatures Required

Nominations must be made using the nomination request form, must be in writing and, unless the procedures and conditions set by the returning officer for the use of an electronic process specify otherwise, be signed by the candidate and by the nominator.

35.3. Delivery of Nominations

Nominators must deliver their nomination request forms to the returning officer:

- (a) within the nomination period pursuant to **clause 34.2**; and
- (b) in accordance with the procedures and conditions set by the returning officer (including as to the use of electronic processes or delivery by post, email, facsimile or hand delivery to the address stipulated in the nomination request form).

Only nomination forms actually received by the returning officer within the nomination period pursuant to **clause 34.2** are valid. Nomination forms that do not reach the returning officer in time, whether due to postal delays, failure of any electronic process or hardware or for any other reason, are invalid.

35.4. Defective Nominations

The returning officer must use reasonable endeavours to notify the candidate and nominator named in any defective nomination form. The returning officer may use such means as the returning officer thinks fit to conduct this notification. Failure of the returning officer to give notification of a defective nomination, or delay in giving notification of a defective nomination, does not invalidate the election process.

35.5. Nominations to be Kept Secret

The Association and the returning officer must use reasonable endeavours to keep the facts and details of nominations secret until the end of the nomination period.

36. Procedures after the end of the nomination period

36.1. Exact or Insufficient Nominations for Board Positions

As soon as possible after the closing date for nominations, the returning officer must determine whether there are nominations for all the Board positions made available for election under **clause 31.9**. If not, the returning officer must advise the Chair and Secretary in writing of the names of the candidates for whom nominations for the position of Director have been received. At the annual general meeting, the returning officer must confirm those circumstances, and then the chair of the annual general meeting must declare those candidates elected to the Board provided that persons who are Individual Members or Member Representatives of Non-Investor Members must not occupy more than forty percent (40%) of the Board positions. The Board may fill any remaining vacancy or vacancies pursuant to **clause 40.1**.

36.2. Circumstances where ballot required

- (a) Subject to **clause 36.2(b)**, if there are more than the required number of candidates duly nominated for the Director positions made available for election under **clause 31.9** then a postal ballot must be conducted and **clauses 37 to 39** of this Constitution apply. Otherwise **clauses 37 to 39** do not apply.
- (b) If on collating the nominations and having regard to the composition of the continuing Board, the returning officer considers the requirements of **clause 31.2** may not be met, the returning officer may refer the nominations to the Board to determine the most expedient and appropriate course to address the potential scale-back of Director positions which may eventuate if a poll were to proceed with a full complement of candidates. If the Board receives such a referral from the returning officer, it shall be entitled, in its absolute discretion, to reject certain nominations and implement appointment procedures to achieve compliance with **clause 31.2**.

37. Ballot procedures

37.1. Eligibility

Only Members who have paid their requisite subscription, dues and levies (including application and annual Membership fees) for the current Financial Year by 31 August of that year (and are noted as having paid those

subscriptions, dues and levies in the register of Members which is provided to the returning officer), are eligible to vote in the election(s) for that Financial Year.

37.2. Returning Officer's Duties

The returning officer must:

- (a) supervise the preparation and distribution of ballot papers by the Association to the Members who are eligible to vote in the elections; and
- (b) set a voting period that remains open for at least two (2) weeks after the date of posting of ballot papers to Members and that ends at least two (2) Business Days before the annual general meeting.

38. Ballot papers

38.1. Ballot Paper Requirements

Ballot papers must:

- (a) state that elections are to be held to fill vacancies of Director positions which have become available in accordance with the Constitution;
- (b) specify the number of Director positions which are available for election; and
- (c) include such other information as the returning officer thinks necessary to conduct as efficient elections as possible (including different forms of ballot papers to distinguish ballot papers for candidates who are Investor Member Representatives from ballot papers for those who are Individual Members or Member Representatives of Non-Investor Members).

38.2. Procedure

The returning officer may adopt any reasonable procedure necessary to enable matching of Members to ballot papers, including requiring naming or signing of envelopes under this Constitution.

38.3. Order of Names

The order in which the names of candidates appear on the ballot paper must be decided by lot or lots drawn by the returning officer in the presence of at least two (2) Directors. No rank or distinguishing feature is to appear in respect of the candidates on the ballot paper.

38.4. Distribution of ballot papers to Members

The ballot papers must be posted out or otherwise made available to all Members at least two (2) weeks and two (2) Business Days before the annual general meeting along with:

- (a) the details (if any) provided by each candidate with their nomination including whether the candidate is an Investor Member Representative or an Individual or Member Representative of a Non-Investor Member. Those details must be presented in a common format in the same order as the names of the candidates appear on the ballot paper. The returning officer may correct any typographical errors in those details, and delete any defamatory material or material which is clearly offensive to good taste;
- (b) unless an electronic process for voting or return of ballot papers has been exclusively adopted, a return addressed envelope in which ballot papers can be sealed for hand delivery or posting back to the returning officer. That envelope may be postage pre-paid and Members must be instructed to print their name or sign (or both) on the outside of the envelope in which they seal a ballot paper; and
- (c) clear "how to vote" instructions.

38.5. Internet

Notwithstanding this **clause 38**, a ballot may be conducted by distributing ballot papers and additional material in accordance with **clause 38.4(a)** and **clause 38.4(c)** via the Internet or any other electronic means approved by the returning officer and votes may be cast using the Internet or those other means. The returning officer may stipulate procedures and conditions as to the manner in which the Internet or any other electronic means shall be utilised and may in their absolute discretion disqualify votes cast which the returning officer considers do not comply with those procedures and conditions.

39. Vote counting

39.1. Mark

Members must mark the ballot paper by recording their preferences for the candidates with an "X" in the box next to the name of the candidate. A Member may vote for any number of candidates that does not exceed the number of positions available to be elected.

39.2. Votes for Directors

The election of such number of Directors as has been set by the Board in accordance with **clause 38.1** shall be of those candidates with the greatest number of votes in descending order but subject to the following conditions:

- (a) only those votes cast in favour of candidates who are Investor Member Representatives will be counted until sixty percent (60%) of the aggregate of Director positions then filled and available for election, including the ex-officio Chair, are Investor Member Representatives; and
- (b) the appointment of the remaining Director vacancies shall be determined by the votes cast in favour of all remaining candidates.

39.3. Valid/Invalid Votes

- (a) Only valid ballot papers received in the post or by delivery at the nominated address (or, where the Internet or other electronic means are being used, received in the manner specified by the returning officer) by the close of the voting period specified on the ballot paper, count. An election is not invalidated because particular ballot papers are not received in time. However, the returning officer in their absolute discretion may by notice in writing to the Secretary extend the voting period for up to two days prior to the commencement of the annual general meeting in any case where the ballot might otherwise be frustrated or made less effective because of external circumstances (such as postal strikes).

39.4. Security of Ballot Papers

On receipt of completed ballot papers, the returning officer, or such person as the returning officer authorises, must immediately secure them.

39.5. Observing Ballot Count

Each candidate may, if they wish, by notice in writing to the returning officer at least one week prior to the close of the voting period, be present and observe the ballot count or appoint one scrutineer to observe the ballot count on their behalf.

39.6. Counting by Returning Officer

Within a reasonable time after the end of the voting period, the returning officer must proceed with the count of the ballot. The returning officer may co-opt such assistance (at the expense of the Association) as the returning officer reasonably requires in order to count the ballot and may adjourn counting from time to time to such times and places as the returning officer reasonably determines.

39.7. Equality of Votes

If there is an equality of votes in the Director elections, then subject to **clause 39.2(b)** the candidates concerned may decide the issue between themselves in such manner as they mutually decide not less than one (1) day before the annual general meeting, or failing such decision being notified to the returning officer in that time then the successful candidate must be decided by lots drawn between the tied candidates before the annual general meeting by the returning officer.

39.8. Other Procedures may Apply

Subject to **clause 39.3(b)**, in any case where there is doubt as to the appropriate procedure to be followed under this Constitution, the returning officer may have regard to the procedures applied by the State Electoral Office for determining the voting in elections under the optional preferential method.

39.9. Declaration of Results at Annual General Meeting

The returning officer must report the result of the ballot or ballots in writing to the Chair and, if different, the chair of the annual general meeting who must declare the successful candidates elected at the annual general meeting.

39.10. Election Report

- (a) The returning officer must provide the Chair and, if different, the chair of the annual general meeting with a written report as to the conduct and results of the ballot or ballots, reporting whether or not the ballot or ballots have been duly conducted in accordance with the requirements of this Constitution and if not, providing details of any non-compliance, and reporting on any other matters that the returning officer wishes to bring to the attention of the Association.
- (b) If so required by motion of the Members at the annual general meeting, the chair of the annual general meeting must read that report to the meeting. The chair must then hand that report to the Secretary who must produce the report at the first meeting of the new Board. During the period of two (2) months after the annual general meeting, the report may be inspected and/or copied by or on behalf of any candidate, at the Office.

39.11. Retention and Destruction of Ballot Papers

Ballot papers must be retained under the control of the returning officer for two (2) months after the annual general meeting during which time they may be inspected by or on behalf of any candidate. Immediately after that period, the returning officer must take reasonable steps to cause the destruction of the ballot papers.

40. Appointment and removal of directors

40.1. Casual vacancies

The Board shall have power at any time, and from time to time, to appoint any Member to the Board to fill a casual vacancy but so that no more than forty percent (40%) of the Board positions are occupied by persons who are Individual Members or Member Representatives of Non- Investor Members. Any Director so appointed shall hold office only until the next following annual general meeting.

40.2. Appointed Directors

In addition to the Board's power in **clause 40.1**, the Board may appoint any Member or Member Representative to the Board but so that Directors appointed under this **clause 40.2** do not occupy more than fifty percent (50%) of the Board positions and so that no more than forty percent (40%) of the Board positions are occupied by persons who are Individual Members or Member Representatives of Non-Investor Members.

40.3. Removal of Directors

The Association may, by ordinary resolution of a meeting convened under **clauses 21** or **22** or by ordinary resolution submitted to a general meeting under **clause 23.2**, remove any Director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall hold office only until the next following annual general meeting.

41. Alternate directors

- (a) A Director may, with the approval of the Board, appoint a person to be the Director's alternate Director for a period which the Director thinks fit.
- (b) An alternate Director must be a Member or Member Representative.
- (c) One person may act as alternate Director to more than one Director.
- (d) An alternate Director is entitled, if the appointer does not attend a meeting of Directors, to attend and vote on behalf of the appointer.
- (e) An alternate Director is entitled to a separate vote for each Director the alternate Director represents in addition to any vote the alternate Director may have as a Director in their own right.
- (f) In the absence of the appointer, an alternate Director may exercise any powers that the appointer may exercise and the exercise of that power by the alternate Director is to be taken to be the exercise of the power by the appointer.
- (g) The office of an alternate Director is vacated if and when the appointer vacates office as a Director.
- (h) The appointment of an alternate Director may be terminated at any time by the appointer even though the period of the appointment of the alternate Director has not expired.
- (i) The appointment and termination of an appointment of an alternate Director must be in writing signed by the Director who makes or made the appointment and does not take effect unless and until the Association has received notice in writing of the appointment or termination.
- (j) An alternate Director is not to be taken into account in determining the minimum or maximum number of the Directors allowed under this Constitution.
- (k) In determining whether a quorum is present at a meeting of Directors, a Director or an alternate Director who attends the meeting is to be counted once only.
- (l) An alternate Director, while acting as a Director, is responsible to the Association for their own acts and defaults and is not to be taken to be the agent of the Director by whom he or she was appointed.

42. POWERS AND DUTIES OF THE BOARD

42.1. Board Powers

The business of the Association shall be managed by the Board. The Board may exercise the powers set out in **clause 4** of this Constitution unless the powers, by the Corporations Act or by this Constitution, are required to be exercised by the Association. The exercise of such powers shall be subject to this Constitution and to the provisions of the Corporations Act. However, any rule or by-law of the Association made by the Board may be disallowed by the Association in general meeting and no resolution or regulation made by the Association in general meeting shall invalidate any prior act of the Board which would have been valid if that resolution had not been passed or made.

42.2. Borrow Funds

The Board may exercise all the powers of the Association to borrow money and to mortgage or charge its property, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt, liability, or obligation of the Association.

42.3. Interest

For the purposes of **clause 5.2(e)** of this Constitution the rate of interest payable in respect of money lent by Members to the Association shall not exceed the lowest rate paid for the time being by banks in New South Wales in respect of term deposits.

42.4. Negotiable Instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Association shall 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 from time to time determines.

42.5. Minutes

The Board shall cause minutes to be made of:

- (a) all appointments of officers and office bearers;
- (b) names of Directors present at all meetings of the Association and of the Board; and
- (c) all proceedings at all meetings of the Association and of the Board.

Such minutes shall be signed by the chair of the meeting at which the proceedings were held or by the chair of the next succeeding meeting.

43. Board meetings

43.1. Meetings

The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.

43.2. Convening of Meetings

Board meetings may be called at any time:

- (a) by the Chair; or
- (b) by any Director.

43.3. Number of Meetings

No less than two (2) Board meetings must be held during the Financial Year.

43.4. Notice

Except in special circumstances as determined by the Chair, seven (7) days' notice shall be given of all Board meetings.

43.5. Place

The time and place of any Board meeting shall be determined by the Chair.

43.6. Chair to Preside

The Chair shall preside at every Board meeting, and in their absence the Deputy Chair shall preside, and in their absence, a chair shall be appointed by the Directors present at the meeting.

43.7. Circular Resolutions

A resolution in writing which has been sent to all Directors and is signed by a majority of the Directors shall be as valid and effectual as if it had been passed at a Board meeting duly convened and held. Any such resolution may consist of several documents in like form, each signed by one (1) or more Directors.

43.8. Voting

Questions arising at any Board meeting shall be decided by a majority of votes. In case of an equality of votes, the Chair shall have a second or casting vote.

43.9. Quorum for Board meetings

The quorum for any Board meeting shall be six (6) Directors, the majority of which must be Investor Member Representatives.

43.10. Form of Meetings

The Board may meet in person, by telephone, video-conference or any other form of instantaneous communication for the transaction of business.

44. Vacation of office

44.1. Deemed vacation

In addition to the circumstances prescribed by the Corporations Act or by the terms of a Director's appointment, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person who, or whose estate, is liable to be dealt with in any way under the law relating to mental health;
- (b) becomes bankrupt or insolvent or makes any arrangement or composition with their creditors generally; or
- (c) is convicted of an indictable offence and the Board does not within one (1) month of that conviction resolve to confirm the Director's appointment or election (as the case may be) to the office of Director.

44.2. Attendance

- (a) The office of a Director will, unless the Chair in their discretion decides otherwise, become vacant notwithstanding **clause 31.3**, at the next annual general meeting if the Director has attended less than 60% of the Board Meetings held during that year.
- (b) If the Chair does not exercise their discretion under **clause 44.2(a)**, the Director whose office became vacant will not be eligible for re-election as a Director in the following elections.

44.3. Discretion of Chair

At the discretion of the Chair, Directors may be deemed to have vacated their office if they are absent without the consent of the Chair from two (2) consecutive Board meetings.

45. Accounts

45.1. Records

The Board shall cause proper accounting and other records to be kept. The Board shall distribute (by post or electronically), or make available on the Association website, copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) accompanied by a copy of the auditor's report as required by the Corporations Act. The Board shall make available, before each annual general meeting, a balance sheet and profit and loss account made up to a date not more than six (6) months before the date of the meeting.

45.2. Inspection

The Board shall from time to time determine in accordance with **clause 10** of this Constitution at what times and places under what conditions or regulations the accounting and other records of the Board shall be open to the inspection of Members.

46. Auditor

46.1. Appointment

The auditor shall be appointed at each annual general meeting and shall hold office until the next annual general meeting and shall be eligible for reappointment.

46.2. Failure to Appoint

If an auditor is not appointed at an annual general meeting, or if there is a vacancy in the office of auditor the Board shall appoint an auditor of the Association for the current year.

46.3. Termination

The Members may at any general meeting terminate the appointment of the auditor and at such meeting appoint an auditor to fill the vacancy so created.

46.4. Nomination

A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless a notice of an intention to nominate that person to the office of auditor has been given by a Member to the Association not less than fourteen (14) days before the annual general meeting. The Association shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the Members, either by advertisement or in any other mode allowed by this Constitution, not less than seven (7) days before the annual general meeting. If, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen (14) days or less after the notice has been given, the notice though not given within the time required by this provision shall be deemed to have been properly given for the purposes thereof and the notice to be sent or given by the Association may instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the annual general meeting.

46.5. Remuneration of Auditor

The remuneration of the auditor of the Association may be fixed by the Association in general meeting but, if not, the remuneration of any such auditor shall be fixed by the Board.

46.6. Access to Records

The Board shall cause the auditor to have access to all records and securities of the Association, and to be furnished with such information and explanation by themselves or any other officers, as may be necessary for the performance of its duties as auditor.

46.7. Attendance at General Meetings

The auditor of the Association shall be entitled to attend any general meeting and to receive all notices of and other communications relating to any general meeting which any Member of the Association is entitled to receive and to be heard at any general meeting it attends on any part of the business of the meeting which concerns it as auditor.

47. Amendment of articles

Any resolution to amend this Constitution must be conditional upon the passing of a special resolution of Investor Members only approving the amendment.

48. Common seal

The Board shall provide for the safe custody of the seal. Every instrument to which the seal is affixed shall be signed by a Director and shall be countersigned by a second Director or by some other person appointed by the Board for that purpose.

49. Notices

49.1. Service

A notice may be given by the Association to any Member or Member Representative either by serving it on them personally or by sending it by post or by the Internet to them at their address as shown in the register of Members or the address supplied by them to the Association for the giving of notices to them.

49.2. Effective Service

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, on the day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post. Where sent by the Internet, service shall be deemed to be effected upon its dispatch from the Association's email system.

50. Indemnity

Subject to the law, every officer, auditor or agent of the Association shall be indemnified out of the property of the Association against any liability incurred by him or her in their capacity as officer, auditor or agent in defending any proceedings, whether civil or criminal, in which judgment is given in their favour or in which he is acquitted or in connection with any application in relation to any such proceedings in which relief is under the law granted to him or her by the Court.