

Tamworth Jockey Club Limited
ACN 640 490 580

Constitution

CORPORATIONS ACT 2001
A Public Company Limited by Guarantee

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PRELIMINARY

1 Company Name

- 1.1 The name of the Company is Tamworth Jockey Club Limited ("the Company").

2 Company Type

- 2.1 The Company is limited by Guarantee and the liability of the Members is limited as provided in this document.

3 Objects

- 3.1 The Objects of the Company are:

- (a) to conduct horse racing and to arrange, promote and conduct race meetings in accordance with the rules, regulations and codes of Racing NSW;
- (b) to promote, conduct and hold race meetings for the recreation and enjoyment of Members and other persons interested in or connected with the sport and business of horse racing;
- (c) to encourage horse racing by the promotion of race meetings and the giving of prizes, stakes and rewards for horse racing;
- (d) to provide for horse racing and training course or courses and to construct fixed or other improvements on and to any such course and to keep and maintain such improvements; and
- (e) to use and apply all property and monies of the Company solely towards the promotion of the objects of the Company and no dividend shall be paid directly or indirectly to any Member of the Company.

- 3.2 In furtherance of the objects of the Company, the Company may:

- (a) purchase, hold, take on Lease or in exchange or on hire or otherwise acquire, mortgage and dispose of any real or personal property and any rights and privileges which the Board shall think necessary or expedient for the purpose of attaining the objects of the Company or promoting the interests of the Company or its Members;
- (b) borrow, raise, obtain or procure monies for the purposes of the Company in such manner as the Board may think fit and in particular, may issue debentures and may mortgage or otherwise encumber all or any of the assets of the Company;
- (c) undertake any kind of business or operation which the Board may from time to time deem expedient and desirable to further the interests of the Company;
- (d) invest all or any of the monies of the Company on security or otherwise and from time to time deem expedient and desirable to further the interests of the Company;

- (e) insure and keep insured any property of the Company against loss or damage and to keep insured all the servants and members of the Company against risk, accident or other insurable risks arising in the course of their employment by the Company or work or other activity for and on behalf of the Company;
- (f) raise funds by means of levies, subscriptions, donations, appeals, social functions and other means, which the Board may deem expedient;
- (g) make, draw, accept, endorse, discount and execute Bills of Lading, Promissory Notes, Bills of Exchange and other negotiable or transferable instruments;
- (h) guarantee the payment of moneys or debts or the performance of any contract by any person, firm or corporation and to give bonds and indemnities;
- (i) take such steps by person or written appeals, public meetings or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Company, in the shape of donations, annual subscriptions or otherwise;
- (j) appoint, employ, remove or suspend any person or persons in the carrying on and conduct and affairs of the Company and to remunerate any such person or persons in return for services rendered to the Company;
- (k) print and publish any newspaper, papers, periodicals, books, leaflets, social media or other electronic media that the Company may think desirable for the promotion of its objects, and to adopt such means of making known and advertising the Company as may seem expedient.
- (l) do all such other things that as are expedient or conducive to the attainment of all or any of the objects of the Company.

3.3 The Company can only exercise the powers in section 124(1) of the Act to:

- (a) carry out the objects of the Company; and
- (b) do all things incidental or convenient in relation to the exercise of its powers.

3.4 The income and property of the company may only be applied towards the promotion of the objects of the Company.

3.5 No income or property of the Company may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Company. However, nothing in this Constitution prevents payment in good faith to a Member:

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;

- (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company; or
- (c) of reasonable and proper rent for premises leased by any Member to the Company.

4 Definitions and Interpretations

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

Act means the *Corporations Act 2001* as in force and amended from time to time, and where appropriate, includes any regulations issued under the Act.

AGM means Annual General Meeting.

Board or Board of Directors means the Board of Directors of the Company.

Chief Executive Officer (CEO) means the person appointed by the Company's Board of Directors who has the primary responsibility for the day to day management of the Company.

Committee means a committee of Directors established in accordance with clause 14.4.

Company means Tamworth Jockey Club Limited.

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

Director means any person holding the position of a Director of the Company and "Directors" means the Directors for the time being of the Company or as the context permits each number of them as have authority to act for the Company.

Employee includes any person engaged under a contract for services and includes part-time, casual or permanent employees.

Funding Agreement means any agreement between the Company and a Funding Body.

Funding Body means any relevant State or Federal Department or NSW Racing, Country NSW Racing or any other person from which the Company receives funds and/or gifts.

General Meeting means a meeting of the Members of the Company called in accordance with this Constitution and includes both Special General Meeting and AGM's.

Legal Costs of a person means legal costs incurred by that person in defending an action for a liability of that person.

Liability of a Person means any liability incurred by that person as an Officer of the Company or subsidiary of the Company.

Member means a member of the Company pursuant to clause 7.

Member present means in connection with a meeting of Members, a Member being present in person.

Minute Secretary means the **CEO** or delegate at all Board Meetings.

Office means the registered office for the time being of the Company.

Officer includes the Directors, Chief Executive Officer and any other person deemed to be an officer of a corporation under the Act.

Poll means any vote taken by a secret ballot by the Members or Board Members.

President or **Senior Vice President** or **Junior Vice President** means the persons elected to those respective positions by the Directors of the Company.

Racing NSW means the body corporate constituted under the Thoroughbred Racing Act 1996 and any successor entity.

Register of Members means the register of Members to be kept pursuant to the Act and in accordance with clause 10.1.

Special Resolution has the meaning set out in the Act.

Treasurer means the person elected to that position by the Directors of the Company.

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

- (a) the singular includes the plural and vice versa;
- (b) the word "person" means a natural person and any partnership, association, body or entity whether incorporated or not;
- (c) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- (d) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (e) a reference to any clause or schedule is to a clause or schedule of this Constitution;
- (f) a reference to a statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.

4.3 An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has,

unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.

4.4 The provisions in this Constitution displace the replaceable rules (but not replaceable rules which mandatorily apply to a public company) contained in the Act.

4.5 Headings do not form part of or affect the construction or interpretation of this Constitution.

5 Powers

5.1 Subject to the Act and this Constitution, the Company has all the powers of a natural person.

6 Winding Up

6.1 If the company is wound up:

- (a) each Member; and
- (b) each person who ceased to be a Member in the preceding year undertakes to contribute to the property of the Company for the:
 - i. payment of the debts and liabilities of the Company (but in relation to those persons referred to in paragraph (b) above, only those contracted before the person ceased to be a Member) and payment of the costs, charges and expenses of winding up; and
 - ii. adjustment of the rights of the contributories amongst themselves, such amount as may be required but not exceeding \$1.00.

6.2 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another institution or corporation which has:

- (a) objects which are similar to the objects of the Company;
- (b) a Constitution which requires its income and property to be applied in promoting its objects; and
- (c) a Constitution that prohibits it from paying or distributing its income and property amongst its Members to an extent at least as great as imposed on the Company. The identity of the corporation or institution is to be determined by the Members at or before the time of dissolution and failing such determination being made, by application to the Supreme Court for determination.

6.3 Funding Agreements

6.3.1 To the extent permitted by law, any assets referred to in a funding agreement must be dealt with in accordance with the provisions of that

Funding Agreement (and in that regard the provisions of clause 6.3.2 apply) and as such assets may include but are not limited to:

- (a) any monies received through a Funding Agreement including any interest accrued on those monies;
- (b) any assets purchased by the Company using monies received through a Funding Agreement and any monies derived from the sale, loss or disposal of such assets; and
- (c) any project generated fees including any charges to Service users.

6.3.2 The Company must consult with each Funding Body and seek their written consent (if required under the relevant Funding Agreement) prior to assigning or otherwise disposing of any assets or interests acquired under a Funding Agreement.

MEMBERSHIP

7 Membership & Eligibility

7.1 Subject to clause 7.3 any natural person, of the age of 18 years or over, is eligible to be a Member of the Company, but only if the person provides the guarantee described in clause 8.3.

7.2 Members of the Company comprise:

7.2.1 all persons who are current members of Tamworth Jockey Club Incorporated ABN 29 968 716 248 at the time the Company is registered and this Constitution commences, will automatically become members of the Company . The Members are deemed to have accepted their liability guarantee pursuant to clauses 6.1(b)(ii) and 8.3 hereof.

7.2.2 life members who consist of persons who have, in the opinion of the Board:

- (a) rendered valuable service to the Company, including, but not limited to, at least 6 years continuous service as a Committee Member or Board Member of the Company, and
- (b) been nominated by the Board for life membership; and
- (c) at a general meeting of the Board been confirmed as a life member.

7.2.3 Current life members of Tamworth Jockey Club Incorporated ABN 29 968 716 248 automatically become life members of the Company.

7.2.4 Honorary members elected by the Board on such terms and conditions as the Board may deem expedient.

7.2.5 other persons admitted to membership pursuant to clause 8.3 and clause 9.

- 7.3 Employees of the Company are not eligible to become members of the Company and any Member who becomes an employee of the Company must resign as a Member of the Company upon commencing employment and no membership subscription will be refunded.
- 7.4 The Board may determine to admit different classes of Members, and subject to this Constitution, the qualification, rights, privileges and obligations of the respective classes of Members are as determined by the Board from time to time.

8 Membership Rights & Responsibilities

- 8.1 Each Member of the Company will have all rights conferred by this Constitution including the right to attend and vote at General Meetings of the Company.
- 8.2 Any rights, privileges and obligations, which a person has by reason of being a member of the Company:
 - 8.2.1 are personal and cannot be transferred or transmitted to any other person or entity; and
 - 8.2.2 (subject only to clause 8.3) cease upon cessation of the person's membership.
- 8.3 Each Member must provide a written guarantee in the form required by the Company from time to time, that the Member will contribute up to \$1.00 to the property of the Company for payment of outstanding debts and liabilities of the Company should it be wound up while the person is a Member or within 12 months of the person ceasing to be a Member except where the reason the person ceases to be a Member is because the person has died. The liability of a Member to contribute towards the payment of debts and liabilities of the Company on the cost, charges and expenses of the winding up of the Company will be limited to the amount of the guarantee.

9 Becoming and Remaining a Member

- 9.1 The Board of Directors must determine by ordinary resolution whether or not to approve a membership application, provided:
 - 9.1.1 an application by an eligible person to become a Member of the Company has been made by completing and signing a written membership form; and
 - 9.1.2 the application has been proposed and seconded by a current member of the Company.
- 9.2 The Board is not required to provide reasons for accepting or rejecting a membership application.
- 9.3 A person whose application for membership is approved becomes a Member from the date the Board approves the application.
- 9.4 As soon as practicable after the Board determines an application for membership, it must notify the applicant whether or not their application has been approved.

- 9.5 The Board of Directors may determine the amount of the membership fee for each financial year.

- 9.6 A life member is not required to pay a membership fee and is entitled to one vote.

10 Register of Members

- 10.1 The CEO must maintain a register of names, showing each Member's name, home address, any other address or contact information provided by the Member and the date of commencement of membership.
- 10.2 Every member is required to communicate any changes in their address to the Company in writing and any such change of address must be entered in the register. The latest address in the register is deemed to be the Member's registered address.

11 Subscription Fee and Renewal of Membership

- 11.1 The annual membership subscription levels determined by the Directors become due and payable on 1 July each year.
- 11.2 The Directors must notify all persons entered on the Register of Members of the amount and time for payment of any annual membership subscription and of any alteration to the annual subscription fee.
- 11.3 Receipt of the annual membership fee renders the Member financial and eligible to vote. Where the annual membership fee is not received:
- 11.3.1 after one month, the Directors may issue a reminder notice to the Member; and
 - 11.3.2 after two months, the Member's rights and privileges associated with membership will be suspended;
 - 11.3.3 where the person is also a Director their appointment as Director is suspended until the annual membership fee is received.

12 Disciplining of Members

- 12.1 The Company may serve a Member with a discipline notice, where the Board passes a resolution stating that in the Board's opinion the Member:
- (a) has refused or neglected to comply with a provision of this Constitution, a Company rule, any code of Conduct adopted by the Company or any NSW Racing Rules or codes of conduct (or any codes, rules or regulations that replace the current ones), or
 - (b) is guilty of any act or omission which, in the opinion of the Board is unbecoming of a member or prejudicial to the interests or reputation of the Company; or
 - (c) is guilty of any act or omission which, in the opinion of the Board, brings the reputation and wellbeing of the Company into question or disrepute; or

- (d) is no longer a fit and proper person to be a Member of the Company.
- 12.2 A discipline notice must detail the Board's concerns and invite the Member to make submissions in respect of those concerns within 14 days. Where the Board suspends the Member's membership pending the making of a disciplinary decision, the discipline notice must include notification of such suspension. Any member that has been provided with a discipline notice may request an opportunity to address the Board in person in respect to the alleged breach or act or omission.
- 12.3 Where the Board has served a Member with a discipline notice and has allowed the Member 14 days within which to respond, the Board may, within the following seven (7) days, make a disciplinary decision by:
 - (a) suspending the Member's membership;
 - (b) expelling the Member from the Company;
 - (c) imposing such conditions upon the Member's membership as the Board deems appropriate in the circumstances.
- 12.4 A disciplinary decision will apply from the date it is made.
- 12.5 Where the Board decides to discipline a Member in accordance with clause 12.3 it must inform the Member of its decision in writing within 7 days.

13 Suspension and/or Cessation of Membership

- 13.1 The period of a suspension made pursuant to a disciplinary decision is at the discretion of the Board.
- 13.2 Any Member the subject of a disciplinary decision of the Board may request a review by a committee appointed by the Hunter North West Racing Association upon the lodgement of the prescribed fee.
- 13.3 The decision of the review board appointed by the Hunter North West Racing Association shall be final, conclusive and not subject to any appeal either at law or in equity.
- 13.4 The Board may suspend a Member's membership for the period between service of a disciplinary notice and the making of a disciplinary decision. The period of such suspension is not to exceed 21 days.
- 13.5 Where the Board suspends a Member's membership, it will notify the Member in writing of the suspension (including the term of the suspension) as soon as practicable.
- 13.6 Any Member will cease to be a Member where he or she:
 - 13.6.1 dies; or

- 13.6.2 becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under a law relating to mental health; or
 - 13.6.3 resigns membership by notice in writing served upon the Company; or
 - 13.6.4 commits an act of bankruptcy or is declared bankrupt or insolvent or that party's estate or otherwise becomes liable to be dealt with under the law relating to bankruptcy or insolvency, or
 - 13.6.5 in the case of a Member being declared bankrupt or insolvent, such suspension and/or cessation of membership only applies during the term of the bankruptcy and upon the discharge of any bankruptcy or insolvency, such Member is entitled to reinstatement, or
 - 13.6.6 is expelled pursuant to a disciplinary decision, or
 - 13.6.7 fails to make payment of the annual membership fee within 6 months of same becoming due.
- 13.7 Where a person ceases to be a Member (including a member who becomes and employee of the Company) they automatically forfeit any right or claim they had (or may have had) upon the Company, arising from their membership.

MANAGEMENT OF TAMWORTH JOCKEY CLUB LIMITED BY THE BOARD

14 Powers of the Board

- 14.1 The affairs of the Company are controlled and managed by a group of Directors known as the Board.
- 14.2 Subject to the Act, this Constitution and any resolution passed by the Company in a General Meeting, the Board:
 - 14.2.1 may exercise all such functions as may be exercised by the Company except those functions that this Constitution requires to be exercised by a General Meeting; and
 - 14.2.2 has the power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of the Company.
- 14.3 The Board may make such by-laws (as are not inconsistent with this Constitution or Act) as it deems necessary for the proper and effective management of the Company and may alter or repeal any such by-laws. Any such by-laws will be valid and binding upon Members unless and until revoked by the Board or amended or revoked by the Members in a General Meeting.
- 14.4 The Board may by resolution, delegate to a Director or Committee or employee any of its powers (subject to any conditions it deems suitable) other than this power of delegation, provided:
 - 14.4.1 the Board adopts a written delegation policy; and

14.4.2 such delegation is made in writing and in accordance with the delegation policy.

14.5 Where the Board by resolution delegates any of its powers, such delegation will be immediately revocable (either wholly or in part) by ordinary resolution of the Board. Despite any delegation, the Board may continue to exercise any function delegated. Any act or thing done or suffered by a delegate acting in the exercise of a delegation has the same force and effect as it would have if it had been done or suffered by the Board.

15 **Composition of the Board**

15.1 The Board must consist of up to and no more than ten (10) Directors comprising:

- (a) at least four (4) and no more than six (6) Directors being Members of the Company each of whom has been elected by the Members as a Director at the AGM ("**Elected Directors**"); and
- (b) up to four (4) directors appointed by Racing NSW ("**Independent Directors**"), with such selection to be in accordance with the requirements of clause 17.
- (c) The Elected Directors of the Tamworth Jockey Club Incorporated ABN 29968716248 at the time the Company is registered and this Constitution commences will automatically and continue as directors of the Company until the first Annual General Meeting after the entity becomes a Company.
- (d) all persons who are Independent Directors of Tamworth Jockey Club Incorporated ABN 29968716248 at the time the Company is registered and this Constitution commences, will automatically become Independent Directors of the Company and will automatically continue in that role for the term of their current appointment.

15.2 Immediately following the AGM each year the Board must elect from among its own number a President, a Senior and Junior Vice President, a Treasurer and such other Officers or Sub-Committees as the Directors decide and those so appointed shall hold office until their successors are appointed by the next Board.

15.3 If, for any reason, the Independent Directors are not determined and appointed in accordance with this Constitution the Company will continue to carry on business with the Board consisting of only the Elected Directors until such time the Independent Directors are determined and appointed. This includes the holding of regular Board meetings to discuss company business and passing resolutions as the Board sees fit and may include the holding of an AGM or Special General Meeting if required. This also includes electing among its own number a President, a Senior and a Junior Vice President, and a Treasurer and such other Officers or Sub-Committees as the Elected Directors decide.

- 15.4 If during the election of office bearers in accordance with clauses 15.2 and 15.3 above there is an even number of votes for two or more candidates the vote shall be determined by lot drawn by placing names of those candidates into a hat and the successful candidate will be drawn from the hat by the Chief Executive Officer.

16 Elected Directors

- 16.1 At the first AGM following the Company's registration the Members will elect directors as follows:

- (a) No person shall be eligible to become an Elected Director of the Board unless he or she shall be nominated in writing by two Members at least twenty eight (28) days prior to the AGM and such nomination shall be consented to in writing by the nominee.
- (b) The Elected Directors shall be elected at the AGM for a period of two years and shall retire bi- annually but shall continue to hold office until their successors are appointed.
- (c) The Elected Directors of the retiring Board shall be eligible for re-election without such nomination and shall be declared re-elected if no nominations be made.
- (d) If there be any candidate or candidates nominated for election as an Elected Director to the Board in addition to the retiring Elected Directors, the election shall be conducted by ballot under the following procedure:
 - i. The CEO shall, within fourteen days of the closing of nominations, forward to each Member and Life Member an envelope addressed to the CEO and shall enclose therewith another envelope marked 'Ballot Paper' together with a list of the Members seeking election indicating those thereon who are retiring Elected Directors and listing the candidates in alphabetical order.
 - ii. Any Member wishing to vote shall record their votes by identifying a mark in the boxes beside the names of those six (6) candidates that they wish to be elected. He or she shall then place the list of candidates in the envelope marked 'Ballot Paper', seal and enclose the same in the envelope addressed to the CEO, after having signed his or her name where indicated inside the last-mentioned envelope and return it to the CEO.
 - iii. All such envelopes must be returned to the CEO and be in the hands of the CEO at or before 4.00 p.m. on the day of the AGM.
 - iv. The CEO shall open the envelopes and the Board might appoint such other person or persons as for the purpose and the voter's name shall be checked with the roll of life and financial Members

and the signatures thereon.

- v. The envelopes marked 'Ballot Paper' received from Members eligible to vote shall be delivered to the President at the AGM.

- vi. Two or more scrutineers shall be appointed by the Members from those attending the meeting and the scrutineers shall thereupon open the envelopes marked 'Ballot Paper' and count the number of votes cast for each candidate and shall, on the completion of such count, notify the President of the result thereof and the President shall declare the required number of candidates receiving the greatest number of votes elected to the Board of Directors.
- vii. Where the votes cast for two or more candidates are equal but insufficient vacancies exist for the election of those candidates, the question of which of those candidates shall be elected to the vacancies shall be determined by lot drawn by placing the names of those candidates into a hat and the successful candidate will be drawn from the hat by one of the scrutineers.

(e) An Elected Director of the Board shall-vacate their office if that person:

- i. ceases, for any reason, to be a Member;
- ii. is absent without leave from any three consecutive meetings of the Board or a Committee or
- iii. tenders their resignation and such resignation is accepted by the Board.

(f) In the event of any vacancy occurring in the Elected Directors on the Board:

- i. if the number of Elected Directors is less than the minimum number (four) required by this Constitution pursuant to clause 15.1(a) the Board must, as soon as practicable, appoint one or more replacement Elected Directors as required to achieve the minimum number;
- ii. if the number of Elected Directors is the minimum number required by this Constitution, (four), the Board may appoint a replacement, and

any Elected Director appointed by the Board pursuant to this clause shall hold office until the next AGM at which Members are required to be elected to the Board.

16.2 Candidates that were unsuccessful in being elected as Elected Directors are eligible for appointment as Independent Directors in accordance with clause 17.

16.3 The Elected Directors of the retiring Board are eligible for re-election without nomination and may be declared re-elected if no other nominations are made.

16.4 At the end of their term, Independent Directors are eligible to seek election as Elected Directors by nomination pursuant to clause 16.1

17 Independent Directors

- 17.1 (a) Racing NSW is to appoint the Independent Directors and to notify the Board of the Company of the identity of those Independent Directors no later than seven (7) days prior to the date at which the term of office of those Independent Directors is to commence.
- (b) In order to be eligible for appointment as an Independent Director, a person must be appropriately skilled or qualified in law, commerce, construction, marketing, event management or hold other qualifications, business skills or experience that Racing NSW deems appropriate.
- (c) An Independent Director shall-vacate his or her office if he or she:-
- i. ceases, for any reason, to be a member of the Company;
 - ii. is absent without leave from any three consecutive meetings of the Board;
 - iii. tenders his or her resignation and such resignation is accepted by the Board; or
 - iv. is removed by Racing NSW, notwithstanding anything in the Constitution or any agreement between the Company and the Independent Director.
- (d) Racing NSW is to appoint a replacement Independent Director whenever the office of an Independent Director becomes vacant.
- (e) Subject to clause 17.1(f), Independent Directors will be appointed for a period of two years at any given time or other term as Racing NSW determines in the instrument of appointment, unless the Independent Director vacates office before the expiry of that term.
- (f) If a person is appointed to fill a casual vacancy in the office of an Independent Director, the person holds office as an Independent Director for the balance of the term of the person's predecessor as Independent Director unless the person vacates office as an Independent Director before the expiry of the balance of that term.
- 17.2 An Independent Director must vacate their office if they:
- (a) are absent without leave from any three (3) consecutive meetings of the Board;
 - (b) tender their resignation and such resignation is accepted by the Board; or
 - (c) are removed by Racing NSW, notwithstanding anything in the Constitution or any agreement between the Company and the Independent Director.

18 Terms of Office

- 18.1 Elected Directors and Independent Directors will be appointed for a two (2) year term.
- 18.2 The Board may grant a Director a temporary leave of absence from office for a specified period. However, no Director will be entitled to appoint an alternate Director to act in their stead during such leave of absence.

19 Appointment of Directors

- 19.1 Any Elected Directorship which:
 - 19.1.1 is not filled by election in accordance with clause 16; or
 - 19.1.2 subsequently becomes vacant;may be filled by any Member appointed by the Board.
- 19.2 An appointment of an Elected Director by the Board must be made in writing and will be effective from the date set out in the written instrument.
- 19.3 Appointments made pursuant to this clause need not be confirmed by the Company in a General Meeting.
- 19.4 An appointment of an Elected Director by the Board under this clause 19 holds office only until the next AGM following the conclusion of the balance of the term of the Elected Directorship filled or replaced, at which time the Elected Director can stand for election.

20 Vacancy on the Board

- 20.1 A Directorship will become vacant where:
 - 20.1.1 the position is offered for election at an AGM but is not filled; or
 - 20.1.2 a Director ceases to hold office by operation of this Constitution or by operation of law.
- 20.2 Despite any vacancy on the Board, provided there is a quorum the Board will continue to act in accordance with this Constitution.

21 Board Meetings and Resolutions

- 21.1 The Board will meet at least six (6) times and up to twelve (12) times in each calendar year for the dispatch of business unless otherwise determined by the Board.
- 21.2 Unless otherwise authorised by the Act, where a Director has a material personal interest in a matter that is being considered at a Board meeting, such Director must not:
 - 21.2.1 be present while the matter is being considered at the meeting; or

- 21.2.2 vote on the matter.
- 21.3 The President or any Vice President may call a meeting of the Board. Notice of a meeting must be given to each Director at least 48 hours (or such other period as is unanimously agreed on by the Board) before the time appointed for the holding of the meeting, except that a Director need not be notified where:
- 21.3.1 the Board has granted the Director a leave of absence for the period during which the meeting is to be held; or
- 21.3.2 the Director is absent from Australia and has not left a telephone number, fax number, email address or other address at which they may be contacted.
- 21.4 A Board meeting may be held by means of telephone, audio-visual or other instantaneous communication method ("a tele-meeting"), provided that where a tele-meeting is held:
- 21.4.1 all of the Directors taking part in the meeting announce their presence to all the other Directors taking part; and
- 21.4.2 all of the Directors taking part in the meeting confirm at the commencement of the meeting that they can communicate clearly and confidentially with each of the other Directors present.
- 21.5 During a tele-meeting:
- 21.5.1 a Director is not to leave the meeting by disconnecting the means of communication without notifying the Chair of the meeting;
- 21.5.2 a Director who has announced their presence and confirmed communication is deemed to be present at the tele-meeting until its conclusion unless or until they notify the Chair of the meeting that they are leaving the meeting.
- 21.6 To constitute a quorum at a Board meeting, the number of persons present (in person or using such technology as is permitted) and entitled to vote must be equal to or greater than half the total number of Directors (not including vacancies). No business is to be transacted (i.e. no resolutions are to be heard) unless a quorum is present at the meeting. Where a Director leaves a meeting part way through and those remaining do not constitute a quorum, the meeting may continue, but no business is to be transacted unless or until a quorum is again present.
- 21.7 If within half an hour of the time appointed for a Board meeting a quorum is not present the meeting is to stand adjourned to a time and date announced by the Chair.
- 21.8 The President is to chair all Board meetings, except that, where they are not present within 10 minutes of the time appointed for a Board meeting, the most senior Vice President is to chair such meetings (or where the Vice President is

also not present within 10 minutes, such other Director as is chosen by the Directors present). The person who commences as Chair of the meeting will continue as Chair of that meeting, even where:

- (a) a person other than the President is required to chair a meeting pursuant to this provision and the President subsequently attends the meeting; or
- (b) a new President is elected during the meeting.

21.9 A resolution of the Board will be passed by simple majority vote of Directors present and entitled to vote at the meeting unless a Special Resolution is required by this Constitution or the Act. No proxy votes will be allowed. Where the votes are equal for and against, the Chair of the meeting will have a casting vote.

21.10 In all other respects, the Board may determine the procedure for, regulate and adjourn its meetings as it thinks fit.

22 Circular Resolutions by Directors

22.1 Despite any other provision, a resolution in writing signed by a majority of the Directors for the time being entitled to vote in relation to the resolution (not being less than a quorum) and stating that the signatories are in favour of the resolution will be as valid and effectual from the time it is signed by the last Director as if it had been passed at a duly convened meeting of Directors.

22.2 A resolution in writing may consist of several documents in like form each signed by one or more Directors.

22.3 Every such resolution is deemed to have been passed on the day and at the time at which the document was last signed by a Director.

22.4 A facsimile transmission, email or scanned electronic image which is received by the Company and which purports to have been signed by a Director is, taken to be in writing and signed by that Director at the time of the receipt, in legible form, of the facsimile transmission, email or scanned electronic image by the Company.

23 Minutes

23.1 The Directors must cause minutes to be kept in accordance with the Act for the purposes of recording:

- (a) the names of the Directors present at each Board meeting of the Directors and of Directors present at each meeting of any Committee;
- (b) all orders, resolutions and proceedings of General Meetings and meetings of Directors and of Committees;
- (c) such matters as are required by the Act to be recorded in the record books of the Company including without limitation all declarations made or notices given by any Director of their interest in any contract or

proposed contract or the holding of any office or property or any other matter whereby any conflict of duty or interest may arise.

- 23.2 Such minutes must be signed by the Chair of the meeting, or the Chair of the next such meeting and the minutes which purport to be signed accordingly may be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

THE COMPANY IN GENERAL MEETING

24 Quorum

- 24.1 No business may be transacted at any General Meeting unless a quorum of Members is present at all times during the meeting.
- 24.2 Ten (10) Members present and entitled to vote constitute a quorum for all General Meetings.
- 24.3 If within 30 minutes after the time appointed for holding a General Meeting a quorum is not present:
- 24.3.1 the meeting if convened upon the requisition of Members must be dissolved;
- 24.3.2 in any other case:
- (1) it will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Directors may by notice to the Members appoint; and
 - (2) if at such adjourned meeting a quorum is not present within 30 minutes after the time appointed for the holding of the meeting the meeting is dissolved.

25 Chair

- 25.1 The President is entitled to preside as Chair at every General Meeting.
- 25.2 Where a General Meeting is held and:
- (a) there is no President; or
 - (b) the President is not present within 30 minutes after the time appointed for the holding of the meeting or if present is unwilling to act as Chair of the meeting, the most senior Vice President may preside as Chair of the meeting or, if the Vice President is not present or is unwilling to act then the other Directors present may choose another Director as chair of the meeting. If no Director is so chosen or if all the Directors present decline to take the chair the Members present may choose one of their number to be Chair of the meeting.

- 25.3 The rulings of the Chair of a General Meeting on all matters relating to the order of business, procedure and conduct of the meeting are final and no motion of dissent from such rulings will be accepted.

26 Adjournments

- 26.1 The Chair of a General Meeting at which a quorum is present:
- (a) may adjourn a meeting with a majority consent of the meeting; and
 - (b) must adjourn the meeting if the meeting so directs to a time and place as determined.
- 26.2 No business may be transacted at any adjourned General Meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 26.3 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- 26.4 It is not necessary to give any notice of an adjournment of a General Meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for 30 days or more in which case notice of the adjourned meeting must be given as in the case of the original meeting.

27 Annual General Meeting

- 27.1 The Company must hold an AGM at least once in each calendar year (within five (5) months after the end of the Financial Year).
- 27.2 The CEO will notify all members of the date of the AGM at least 42 days prior to the meeting.
- 27.3 The business of the AGM will include:
- the election of Directors;
 - the consideration and approval (or otherwise) of the annual financial report, Directors' report and auditor's report;
 - the appointment of the auditor (where applicable);
 - the fixing of the auditor's remuneration (where applicable); and
 - any other business referred to in the notice of meeting.

28 Special General Meetings

- 28.1 All meetings of Members other than AGM's will be called Special General Meetings and may be called by:
- the President acting on a resolution of the Board; or
 - any other person(s) permitted to call such meeting pursuant to the Act.

29 Notice of General Meetings

- 29.1 No business will be transacted at any General Meeting unless, at least 21 days prior to the date fixed for the meeting (unless the Act allows a lesser time period), each Member has been served with a notice which complies with the notice requirements set out in the Act.

30 Voting on Resolutions

- 30.1 At any General Meeting a resolution to be considered at the meeting is decided on a show of hands unless a poll is demanded by:
- (a) the Chair of the meeting;
 - (b) at least two (2) Members present entitled to vote on the resolution.
- 30.2 A declaration by the Chair of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Company which has been signed by the Chair of the meeting or the next succeeding meeting is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 30.3 The election of Directors will at all times be by poll. Further the election of Directors will be conducted according to the procedure set out in this Constitution.

31 Polls

- 31.1 A poll may be demanded:
- (a) before a vote on a resolution is taken;
 - (b) before the voting results on a show of hands are declared; or
 - (c) immediately after the voting results on a show of hands are declared.
- 31.2 If a poll is demanded it must be taken in such a manner and at such time and place as the Chair of the meeting directs.
- 31.3 The result of the poll will be taken to be the resolution of the meeting at which the poll was demanded.
- 31.4 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 31.5 A poll demanded on the election of a Chair or any question of adjournment of the meeting must be taken immediately.
- 31.6 The demand for a poll may be withdrawn.

32 Rights to Vote

32.1 A Member entitled to vote has one vote, both on a show of hands and a poll.

33 No Rights to Vote

33.1 A Member is not entitled to be present or to vote at any General Meeting if any amount payable by the Member in respect to their membership is more than one month in arrears at the date of the meeting.

34 Challenges to Voting Rights

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

35 Casting Vote on Equality

35.1 In the case of an equality of votes whether on a show of hands or on a poll the Chair of the meeting at which the show of hands is taken or at which the poll is demanded is entitled to a casting vote in addition to their vote as a Member.

36 Non-Member Invitation

36.1 The Chair of a General Meeting may invite any person who is not a Member to attend and address a meeting.

36.2 Any auditor of the Company is entitled to attend and address a General Meeting.

37 Postal Ballots

37.1 Subject to the provisions of the Act and this clause, the Board may, if it thinks fit, submit any question or resolution to the vote of all Members entitled to vote at a general meeting of the Company by means of a postal ballot in such form and returnable in such manner as the Board decides.

A resolution approved by a majority or specific majority of the Members competent to pass such a resolution voting by such ballot will have the same standing as a resolution carried by such a majority or specific majority at a duly constituted general meeting of the Company.

GENERAL

38 Execution of Documents

38.1 Without limiting the manner in which the Company may execute any contract, including as permitted under Section 127 of the Act, the Company may execute any agreement, deed or other document by:

(a) two Directors signing the same; or

(b) one Director and the Chief Executive Officer signing the same; or

- (c) otherwise in accordance with a policy adopted by the Board from time to time, but such a policy must be in compliance with the Act.
- 38.2 Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.
- 38.3 The assets and income of the Company will be applied solely in furtherance of its objects and no portion will be distributed directly or indirectly to its Members except as bona fide compensation for services rendered or expenses incurred on behalf of the Company.

39 Accounts and Inspection

- 39.1 The Directors must:
 - (a) keep proper financial records;
 - (b) distribute copies of the financial reports of the Company and a Director's report in accordance with the requirements of the Act; and
 - (c) from time to time determine whether and to what extent, at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of Members not being Directors.
- 39.2 The Directors will ensure the accounts of the Company are audited in accordance with the requirements of the Act and Funding Bodies.

40 Service of Notices and Documents

- 40.1 A notice may be given by the Company to any Member by:
 - (a) serving it on the Member personally;
 - (b) sending it by post to the Member or leaving it at the Member's address shown in the Register or otherwise the address supplied by the Member to the Company for the giving of notices;
 - (c) facsimile to the facsimile number supplied by the Member to the Company for the giving of notices; or
 - (d) sending it to the electronic (email) address supplied by the Member to the Company for the giving of notices.
- 40.2 Any Member who has not left at or sent to the Office their place of address for inclusion in the Register as the place at which notices may be given to the Member is not entitled to receive any notice.
- 40.3 Where a notice is sent by post, service of the notice is taken to be effected by properly addressing, prepaying and posting a letter containing the notice and is deemed to have been received on the day after the date of posting. Service of a

notice to a Member outside Australia is deemed to have been received at the time it would ordinarily be received in the ordinary course of the post.

- 40.4 Where a notice is sent by facsimile or other electronic means, service of the notice is taken to be effected by properly addressing and sending the notice and is taken to have been received on the business day after it is sent or upon automatic electronic confirmation.
- 40.5 Evidence of service of a notice by post is established by production of postal register kept by the CEO.

41 Chief Executive Officer

- 41.1 The Directors of the Company may appoint a person to the office of CEO of the Company for the period, and on terms as the Directors see fit.
- 41.2 The CEO will not be a Director of the Company.
- 41.3 The Directors may revoke or vary:
- (a) an appointment; or
 - (b) any of the powers conferred on the Chief Executive Officer.
- 41.4 Subject to the Act, any compensation payable to a person in respect of the revocation of that person's appointment as CEO will be governed by the terms of any agreement between the Company and that person.

42 Amendment of Constitution

- 42.1 This Constitution may only be altered, rescinded or added to by a Special Resolution of the Company in a General Meeting.

43 Notices of General Meeting

- 43.1 Notice of every General Meeting must be given in any manner authorised by this Constitution to:
- (a) every Member; and
 - (b) the auditor for the time being of the Company.

44 Indemnity

- 44.1 Every Director (and former Director) and every Officer (and former Officer) of the Company is entitled to be indemnified to the full extent permitted by law against any liabilities incurred as such by a Director or Officer (or former Director or Officer) in that capacity. The Company agrees to:
- (a) indemnify the Director and Officers against certain liabilities (set out in the following clauses) that the Director or Officer may incur or for which they may become liable by reason of their position or activities with the Company;

- (b) provide the Directors and Officers with access to Board papers; and
 - (c) pay a premium in respect of contracts of insurance to protect Directors and Officers against such liability.
- 44.2 The Company agrees to indemnify the Directors and Officers to the full extent permitted by law against each and every liability they may incur or for which they may become liable to another person or entity in connection with any act of the Director or Officer in the discharge of their duties or the performance of their functions as Directors or Officers of the Company.
- 44.3 The Company also agrees to indemnify the Directors and Officers to the full extent permitted by law against any costs and expenses incurred (or for which they become liable to pay to another person or entity) in connection with any act of the Director or Officer in the discharge of their duties or the performance of their functions as Director or Officer of the Company.
- 44.4 The Company agrees to reimburse the Directors and Officers for any reasonable costs incurred at the request of the Company to avoid, resist or defend any action brought against them, including the rendering of assistance and co-operation in the conduct of a claim, and/or any actions necessary to enable the Company to be subrogated to and enjoy the benefits of the Directors or Officers rights to cross claim against any third party.
- 44.5 No Director or Officer will be indemnified by the Company in respect of any liability where it is proven that there has been conduct involving a lack of good faith, wilful misconduct or reckless behaviour on the part of the Director or Officer.
- 44.6 A Director or Officer may engage separate legal representation where the Company has refused to authorise the representation or participation by lawyers other than the lawyers acting also for the Company, and there is a reasonable likelihood that the interests of the Director and the Company would conflict were the same lawyers to act on behalf of both the Director and the Company.
- 44.7 The Company is required to keep a complete set of Board papers, in chronological order, in suitable secure custody for a period of at least seven (7) years after a Director or Officer ceases to hold office. If a Director or Officer asks to inspect or for a copy of a Board paper the Company must within 14 days of receiving such request allow such inspection to take place, or provide a copy of the Board papers at no charge.
- 44.8 The Company must maintain Directors and Officers liability insurance for the duration of the tenure of any Director or Officer, and for at least seven (7) years after a Director or Officer ceases to hold office. Where the Director or Officer ceases to hold office, the Company must ensure that such insurance contains terms which are substantially similar to those contained in the insurance contract arranged whilst the Director or Officer held their position with the Company.