



THE CONSTITUTION

OF

THE NATIONAL ASSOCIATION FOR SUSTAINABLE AGRICULTURE AUSTRALIA LIMITED

ACN 003 260 348

Adopted: 2000

Amended:

15th November 2012

4th November 2013

27th October 2017

1. INTERPRETATION AND PRELIMINARY

1.1 Definitions

In this Constitution:-

Board: means the board of directors of the Company.

Board Appointed Director: means a Director appointed by the Board.

Certified Operator: means a person or company who is certified by the Company in connection with their product(s), process(es) or service(s) and includes, as the context requires, a person or company who:

- is a director of the Certified Operator;
- is a shareholder of the Certified Operator; or
- is concerned with, or takes part in, the management of the Certified Operator.

Constitution: means the Constitution and any supplementary substituted or amending Constitution for the time being in force;

Company: means The National Association for Sustainable Agriculture, Australia Limited;

Directors: mean the directors of the Company;

Law: means the Corporations Law;

Member Elected Director: means a Director elected by the Members

Organic Agriculture: means a system of agriculture able to balance productivity with low vulnerability to problems such as pest infestation and environmental degradation while maintaining the quality of land for future generations. In practice this involves a system which avoids or largely excludes the use of synthetically compounded fertilisers, pesticides, growth regulators, livestock feed additives and other harmful or potentially harmful substances. It includes the use of technologies such as crop rotations, mechanical cultivation and biological pest control; and such material as legumes, crop residues, animal manures, green manures, other organic wastes and mineral bearing rocks. The intention is to encourage natural biological systems.

Member: means a person, partnership or other legal entity which has agreed to pay the annual subscription prescribed under clause 6.5 (and entitled "Voting Member" prior to the Annual General Meeting on 27.11.04 when the separate classes of Voting and Associate Membership were discontinued from 1 July 2005 for existing members and with effect from the AGM 27.11.04 for new applicants).

Poll: means a general non-exclusive method of unequivocal determination and counting of a Member's or Proxy's voting action and specifically includes the counting of a vote cast by a Member or Proxy via telephone, video or other electronic communication methods.

Qualified Applicant: means

- a body corporate or an unincorporated association the constitution of which prohibits the distribution of profit to members and the objects of which are the same or substantially the same as those of the Company;
- persons or organisations who have been certified by the Company as having organic practices in place;
- persons who act as inspectors under contracts to the Company;
- any other person who supports Organic Practices and/or the Company's objects.

Representative Council: means those associations in each State and Territory being members of the Company that are recognised by the Board as State and Territory Councils.

Seal: means the common seal of the Company and includes any official seal of the Company.

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

Show of Hands: means any general non-exclusive method of determining whether a vote is passed by a requisite majority. The term "Hands" in the phrase "Show of Hands" shall mean to include any other unequivocal sign of voting intention, including a Member's or Proxy's voting intention delivered via telephone, video or other electronic communication methods.

Organic Practices: means procedures, processes and systems put in place by a primary producer or a processor which are consistent with the principles of organic agriculture.

1.2 Interpretation

Division 10 of Part 1.2 of the Corporations Law applies in relation to this Constitution as if the Constitution were an instrument made under the Law as in force on the day when this Constitution became binding on the Company.

1.3 Expressions in Law

Except so far as the contrary intention appears in this Constitution, an expression in this Constitution that deals with a matter dealt with by a particular provision of the Law has the same meaning as in that provision of the Law.

1.4 Headings

Headings and marginal notes are for convenience only and shall not be used in the interpretation of this Constitution or of any part thereof to which they relate.

1.5 Gender

Words denoting a gender include each other gender and words denoting an individual or person include a body corporate.

1.6 Replaceable Rules Exclude

The replaceable rules contained in the Law shall not apply to this Company.

2. PURPOSE AND OBJECTS

The Company is established for the purposes of and to give effect to the objects set out below:

2.1 Objects

The objects for which the Company is established are to:-

- 2.1.1 encourage producers and processors in adopting organic practices;
- 2.1.2 establish a system for the collection and distribution of information relating to Organic Agriculture;
- 2.1.3 stimulate public interest in the practice of Organic Agriculture; and the products thereof, through the dissemination of information;
- 2.1.4 lobby government, institutions, corporations and other such bodies regarding policies relating to Organic Agriculture;
- 2.1.5 promote and/or conduct research relating to Organic Agriculture and the products thereof;
- 2.1.6 promote, review and maintain standards for products produced under Organic Practices; and to administer the use of a label under which such products may be sold;
- 2.1.7 promote appropriate distribution systems for produce grown by methods of Organic Agriculture;
- 2.1.8 establish co-operative working relationships between national and international organisations who are promoting Organic Agriculture;
- 2.1.9 actively support initiatives in agriculture and/or certification which complement the above aims.

3. USE OF FUNDS

The income and the property of the Company, whencesoever derived, shall be applied solely towards the promotion of the objects of the Company as set forth in this Constitution; and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, to the members of the Company.

The Company may in good faith pay reasonable and proper remuneration to any servant or employee of the Company in return for any services actually rendered to the Company. The Company may resolve to reimburse a person for reasonable expenditure incurred by way of travelling expenses or otherwise in the service of the Company.

4. LIABILITY

The liability of each member of the Company is limited.

5. DISSOLUTION

Every member of the Company undertakes to contribute to the property of the Company in the event of the same being wound up while he/she is a member or, within one year after he/she ceases to be a member, for payment of the debts and liabilities of the Company (contracted before he/she ceased to be a member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding subscription fees.

If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Company, but shall be given or transferred to some other organisation, having objects similar to the objects of the Company, which shall prohibit 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 Company by Clause 4 of this Constitution. Such institution or institutions shall be determined by the members of the Company at or before the time of dissolution, and if and so far as effect cannot be given to the aforesaid provision, then to some charitable object.

6. MEMBERSHIP

6.1 Current members

All persons who are members on the date on which this Constitution is adopted shall remain members until their membership ceases in accordance with this Constitution PROVIDED THAT, except in the case of an Honorary Member, a current member must elect by 31 May 2000 whether the member wishes to be a Voting Member or an Associate Member until which time, all current members will be deemed to be Voting Members PROVIDED FURTHER THAT if a member fails to make an election as aforesaid by 31 May, the member will be deemed to be an Associate Member.

6.2 Applications for membership

Subject to clause 6.8, an application for Membership may only be made by qualified applicants and shall be in such form as the Board from time to time prescribes.

6.3 Acceptance of application

At the next meeting of the Board after the receipt of any application for membership, such application shall be considered by the Board, who shall thereupon determine upon the admission or rejection of the Qualified Applicant. In no case, shall the Board be required to give any reason for the rejection of an applicant.

6.4 Admission of members

When a Qualified Applicant has been accepted for membership, the Secretary shall forthwith send to the applicant written notice of acceptance and a request for payment of the entrance fee. Upon payment of the entrance fee, the Qualified Applicant shall become a member of the Company provided nevertheless that if such payment be not made within two (2) calendar months after the date of the notice, the Board may in its discretion cancel its acceptance of the Qualified Applicant for membership of the Company.

6.5 Determination of fees

Subject to clause 6.8, the annual subscription payable by members of the Company shall be such as the Company in general meeting shall from time to time prescribe the annual subscription fee for a Member shall be ninety-nine dollars (\$99) including GST provided that a Member shall be entitled to a discounted annual subscription fee of fifty-five dollars (\$55) including GST if the Member has been certified by the Company or a subsidiary of the Company as having in place Organic Practices and the rate paid by a Member who is under the age of 26 shall be \$49.50 (inclusive of GST) and the rate paid by a Member under the age of 26 who has been certified by the Company or a subsidiary of the Company as having in place Organic Practices shall be \$27.50 (inclusive of GST);

6.6 When due and payable

Subject to this Constitution, all annual subscriptions shall become due and payable as per terms set by the NASAA Board.

6.7 Moving from Associate Membership to Membership

If before 30 June 2005 an Associate Member wishes to become a Member, the member may do so by giving one month's notice to the Board and by paying to the Company a further subscription being the difference between the annual subscription for Membership and the annual subscription fee paid by the Associate Member.

6.8 Honorary Member

The Board may appoint any person as Honorary Member where the person has rendered distinguished service in the development of Organic Agriculture and such Honorary Member shall pay no fee. Any member of the Company who was appointed an Honorary Member on the date of adoption of this Constitution will remain as such after such adoption.

7. CESSATION OF MEMBERSHIP

7.1 Non-payment of subscriptions

If the annual subscription of a member shall remain unpaid for a period of two (2) calendar months after it becomes due then the member may after notice of the default shall have been sent to the member by the Secretary be debarred by resolution of the Board from all privileges of membership and the member's name may be removed by the Board from the Register of Members provided that the Board may reinstate the member and restore the member's name to the Register on payment of all arrears if the Board thinks fit to do so.

7.2 Resignation of member

A member may at any time by giving notice in writing to the Secretary resign their membership of the Company but shall continue to be liable for any annual subscription and all arrears due and unpaid at the date of his resignation and for all other moneys due by him to the Company.

7.3 Misconduct

If any member shall wilfully refuse or neglect to comply with the provisions of the Constitution of the Company or shall be guilty of any conduct which in the opinion of the Board is unbecoming of a member or prejudicial to the interests of the Company the Board shall have the power to expel the member from the Company and erase his name from the Register of Members provided that at least one (1) week before the meeting of the Board at which a resolution for his expulsion is passed the member shall have had notice of such meeting and of what is alleged against him and of the intended resolution for his expulsion and that he shall at such meeting and before the passing of such resolution have had an opportunity of giving orally or in writing any explanation or defence he may think fit and provided further that any such member may by notice in writing lodge with the Secretary at least twenty four (24) hours before the time for holding the meeting at which the resolution for his expulsion is to be considered by the Board elect to have the question of expulsion dealt with by the Company in General Meeting and in that event a General Meeting of the Company shall be called for the purpose and if at the meeting a special resolution for the expulsion of the member be passed the member shall be expelled and his name removed from the Register of Members.

8. GENERAL MEETINGS

8.1 Directors convening general meetings

The Board may whenever it thinks fit convene a general meeting.

8.2 Members convening general meetings

Only Members shall have the power to convene a general meeting pursuant to the provisions of Section 249F of the Law.

8.3 Annual general meetings

An annual general meeting of the Company shall be held in accordance with the Law and all meetings other than annual general meetings shall be called special general meetings.

8.4 Notice of general meeting

At least twenty one (21) days' notice of a general meeting must be given to members specifying the place, day and hour of the meeting and in the case of special business, the general nature of such business.

8.5 Omitting to give Notice

The accidental omission to give notice of any general meeting to or the non-receipt of any such notice by any of the members or the auditors of the Company or the accidental omission to advertise (if necessary) such meeting shall not invalidate the proceedings at or any resolution passed at any such meeting.

8.6 Postponement of meeting

The Board shall have power to postpone the holding of any general meeting provided that the postponed meeting shall be held within twenty-one (21) days of the date for which it was originally called.

8.7 Notice of Postponed Meeting

Whenever any meeting is postponed for ten (10) days or more, then not less than two (2) days' notice shall be sent to the members of every such postponed meeting as in the case of the original meeting but it shall not be necessary to specify in such notice the nature of the business to be transacted at such postponed meeting.

8.8 Special business

All business shall be special that is transacted at a general meeting and also all that is transacted at an annual general meeting with the exception of the consideration of the accounts, balance sheets, the report of the Directors and auditors, the election of Directors in place of those retiring and the appointment and fixing of the remuneration of the auditors.

9. PROCEEDINGS AT GENERAL MEETINGS

9.1 Quorum

No business shall be transacted at any general meeting unless a quorum of seven Members is present at the time when the meeting proceeds to business.

- 9.1.1 A Member is to be counted as 'present' at the time when the meeting proceeds, either by an appearance in person, or by a functional presence via telephone, video or other electronic communication methods - which instruments will be provided for the convenient use of Members by the Company to the place where the meeting is held. The Chairman, exercising reasonable judgment, shall have exclusive power to decide whether a Member's presence via telephone, video or other electronic communication methods confers a functional presence for the Member, by reference to whether the said communication mechanisms allow the Member to reasonably understand, contribute and respond unequivocally to the proceedings of the meeting.

9.2 Member includes a Proxy or Representative

For the purposes of s9 of this Constitution the meaning of the word "Member" includes a person attending as a Proxy, or as representing a corporation which is a Member.

9.3 No quorum present

If within fifteen minutes after the time appointed for the holding of a meeting a quorum is not present, the meeting, if convened by or upon the requisition of Members, shall be dissolved but in any other case, it shall stand adjourned for an hour at the same place or to such other day time and place as the Board may by notice to the members appoint. If at such adjourned meeting a quorum is not present the Members present shall be a quorum.

9.4 Chairman

If the Board has elected one of the Directors as Chairman that Director shall preside as chairman at every general meeting.

9.5 Adjournment

The Chairman may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

9.6 Notice of Adjourned Meeting, Required in Certain Circumstances

When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

9.7 No Notice Required

Except as provided by clause 9.6, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

9.8 Voting

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

9.8.1 the Chairman; or

9.8.2 any member present in person, by proxy or by representative and is entitled to vote.

9.9 Evidence of Votes Cast

Unless a poll is so demanded, a declaration by the chairman 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 containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

9.10 Withdrawing Demand for Poll

The demand for a poll may be withdrawn.

9.11 Manner of Holding a Poll

If a poll is duly demanded, it shall be taken in such manner and (subject to clause 9.12 either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

9.12 Certain Polls to be Held Forthwith

A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.

9.13 Casting Vote

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

9.14 General voting rights

Subject to any rights or restrictions for the time being attached to any class or classes of membership at meetings of members or classes of members:-

- 9.14.1 on a show of hands, every member present has one vote, and on a poll every Member present in person or by proxy or attorney has one vote;
- 9.14.2 an Associate Member and an Honorary Member has no entitlement to vote whether on a show of hands or on a poll.

9.15 Mental health, Insolvency

- 9.15.1 If a member, being a natural person, is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health or bankruptcy, his committee or trustee or such other person as properly has the management of his estate may exercise any rights of the member in relation to a general meeting as if the committee, trustee or other person were the member.
- 9.15.2 If a member, being a body corporate is wound up under the Corporations Law or any other similar Statute, its liquidator may exercise any rights of the member in relation to a general meeting as if the liquidator were the member.

9.16 No Entitlement to Vote unless Financial

A Member is not entitled to vote in a ballot or at a general meeting unless all subscription fees and other levies and sums presently payable by him/her (whether in respect of his/her membership in the Company or otherwise) have been paid.

9.17 Objections to voting qualifications

- 9.17.1 an objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- 9.17.2 any such objection shall be referred to the chairman of the meeting, whose decision is final.
- 9.17.3 a vote not disallowed pursuant to such an objection is valid for all purposes.

9.18 Proxy instrument

The instrument appointing a proxy shall be in writing (in the common or usual form) under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised. The number of proxies a Member may vote at any one meeting is limited to four in total.

9.19 Proxy Need Not be a Member

A proxy may but need not be a member of the Company.

9.20 Extent of Proxy's Power

The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

9.21 Form of Proxy

An instrument appointing a proxy may be in the following form or any other form which the Directors shall approve:

I,
of
being a member of
hereby appoint
of
or failing him/her
of
as my proxy to vote for me and on my behalf at the annual or general meeting (as the case may be) of the Company to be held on the day of and at any adjournment thereof.

Signed this day of 20

9.22 Alternative Proxies

The instrument appointing a proxy may appoint several persons in the alternative.

9.23 Deposit of proxy

The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the Company or at such other place within the State as is specified for that purpose in the notice convening the meeting, not less than forty-eight (48) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or in the case of a poll, not less than twenty-four (24) hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid unless the Chairman of such meeting with the consent of a majority of the members in person or by proxy attorney or representative at such meeting shall otherwise direct.

9.24 Proxy vote

A vote given or act done in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, or the transfer of the share in respect of which the instrument or power is given, if no authenticated intimation in writing of the death, unsoundness of mind, revocation or transfer has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

10. APPOINTMENT AND REMOVAL

10.1 Number of Directors

Unless otherwise determined by ordinary resolution of the Company, the number of Directors shall be five (5):

- 10.1.1 not more than three (3) of whom must be elected by the Members (“Member Elected Directors”);

- 10.1.2 not more than two (2) of whom must be appointed by resolution of the Board having regard to the specific skills and experience required by the Board (“Board Appointed Directors”); and
- 10.1.3 Member Directors elected by the Members shall be more than or equal to the number of Board Appointed Directors.
- 10.1.4 NASAA and NCO staff members who wish to take up NASAA membership are not eligible to nominate as a Director of NASAA during their term of employment.

10.2 Increasing or Reducing Number of Directors

The Company may, by ordinary resolution, increase or reduce the number of Directors.

10.3 Tenure of Office

Subject to clause 10.12:

- 10.3.1 a Member Elected Director shall hold office until the annual general meeting two years after his or her appointment; and
- 10.3.2 a Board Appointed Director shall hold office until two years after his or her appointment;

unless he or she shall be removed by resolution of the Company or until such office ipso facto becomes vacant pursuant to this Constitution or the Law.

10.4 Procedure for Election of Member Elected Directors

10.4.1 Nominations of Directors

- 10.4.1.1 A notice shall be sent to Members on or before 1 July each year inviting nominations of candidates for election as Directors.
- 10.4.1.2 Nominating candidates shall have been a member of NASAA for 12 months prior to nomination closing date.
- 10.4.1.3 Nominations for Directors (other than in the case of retiring Directors) shall be signed by two Members, at least one of whom must have been a Member for the previous 12 months. A nomination will not be valid unless accompanied by a notice in writing from the candidate providing details of his/her qualifications and experience and stating that he/she agrees to his/her nomination.
- 10.4.1.4 Nominations must be lodged at the registered office of the Company on or before 5:00pm on 15th August or such other date and time fixed by the notice.
- 10.4.1.5 Where the number of nominations equals the number of vacant positions to be filled, the candidate will be deemed elected and the rest of this clause 10.4 will not apply.
- 10.4.1.6 Where the number of nominations exceeds the number of vacant positions to be filled, the Board will appoint a returning officer and conduct a ballot in accordance with this clause 10.4.

10.4.2 Ballot Papers

- 10.4.2.1 A printed ballot paper shall be prepared setting out the names of all candidates nominated as Directors.

- 10.4.2.2 The order of candidates' names on ballot papers be determined by lot with the first name withdrawn being the first name on the ballot paper and so on.
- 10.4.2.3 The **Returning Officer** appointed by the Board under paragraph (e) below must initial and post each ballot paper to each Member at least twenty one (21) days before the close of the ballot as specified on the ballot paper.
- 10.4.3 **Marking and Returning Ballot Papers**
- 10.4.3.1 Ballot papers shall be marked by placing a cross against as many names of the candidates for Director as there are Directors to be elected (and no more).
- 10.4.3.2 Crosses shall constitute formal votes for the candidates crossed;
- 10.4.3.3 Ballot papers must be returned to the registered office of the Company on or before the date and time stated on the ballot paper.
- 10.4.4 **Scrutineers**
Each candidate may appoint one scrutineer to attend the opening of the envelopes and counting of votes.
- 10.4.5 **Returning Officer**
An independent person shall be appointed by the Board to act as returning officer.
- 10.4.6 **Counting Votes**
- 10.4.6.1 As soon as practicable after the date of the ballot, the returning officer (in the presence of a candidate's scrutineer, if required by the candidate) must open the ballot box, reject the informal ballot papers and count the votes on the ballot papers, not being informal.
- 10.4.6.2 A ballot paper is to be rejected as informal:-
- if it is not duly initialed by the returning officer;
 - it is not marked clearly in accordance with clause 10.4.3.
- 10.4.6.3 The Returning Officer shall notify the result of the ballot to the Chairman.
- 10.4.7 **Declaration of Result**
- 10.4.7.1 The candidates for the office of Director receiving the highest number of formal votes from Members shall be declared elected as Directors by the Chairman and the members shall be advised accordingly.
- 10.4.7.2 In the case of an equality of votes for candidates for the office of Director, the result shall be determined by lot and the order in which the names are withdrawn shall be determine who is declared elected as Directors.

10.5 Appointment of Board Appointed Directors

The Board will appoint persons to be Directors having regard to the specific skills and experience required by the Board. Such Board Appointed Directors shall first be identified and nominated via an open application process overseen by the Board.

10.6 Directors' appointment

The Board may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors (but up to a maximum of two additional Directors over and above the number determined in accordance with this Constitution). Such appointments shall terminate at the next annual general meeting.

10.7 Removal and appointment by Company

The Company may by resolution remove any Director and may by resolution appoint another person in his stead.

10.8 Appointment where no Directors

In the event of there being no Directors at any time for any reason, the Company may by resolution appoint the minimum number of persons as Directors.

10.9 Remuneration

The Directors shall be paid such remuneration as is from time to time determined by the Company in general meeting, which shall be deemed to accrue from day to day.

10.10 Expenses

The Directors may be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or otherwise in connection with the business of the Company.

10.11 Qualification of Directors

10.11.1 A Member Elected Director shall be required to have been a Member of the Company for at least twelve (12) months and must be nominated as Director by at least two (2) other Members.

10.11.2 No two persons who are directors, shareholders or concerned with, or take part in, the management of the same Certified Operator may be appointed or serve as Directors at the same time.

10.12 Vacation of office

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Law or by virtue of any other provision of this Constitution, the office of a Director becomes vacant if the Director:

- 10.12.1 being elected as a Member Elected Director under clause 10.4, ceases to be a Member of the Company;
- 10.12.2 becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- 10.12.3 resigns his office by notice in writing to the Company;
- 10.12.4 is absent without the consent of the Directors from all the meetings of the Directors held during a period of six (6) months;
- 10.12.5 holds any office of profit under the Company; or
- 10.12.6 (except in the case of Company appointed inspectors) is directly or indirectly interested in any contract or proposed contract with the Company PROVIDED THAT a Director shall not vacate his office by reason of his being a member, director, officer or employee of any corporation, society or association if he shall have declared the interest and the nature of his interest in the manner required by Law.
- 10.12.7 being appointed as a Board Appointed Director under clause 10.5, the Board resolves to withdraw its support for the Director.

11. POWERS AND DUTIES OF DIRECTORS

11.1 Directors to Manage Business

Subject to the Law and to any other provision of this Constitution, the business of the Company shall be managed by the Directors, who may exercise all such powers of the Company as are not, by the Law or by this Constitution, required to be exercised by the Company in general meeting.

11.2 Certain Powers

Without limiting the generality of clause 11.1, the Directors may exercise all the powers of the Company to raise or borrow money, to mortgage or charge its undertaking or any property (both present and future) or business of the Company to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

11.3 Appointing Attorneys

The Directors may from time to time by power of attorney, appoint any corporation, person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors under this Constitution), for such period and subject to such conditions as they think fit and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorize the attorney to delegate all or any of the powers, authorities and discretions vested in such attorney.

11.4 Negotiable instruments

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed or otherwise executed in such other manner as the Directors determine.

12. PROCEEDINGS OF DIRECTORS

12.1 Directors' Meetings

The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit PROVIDED THAT the Board must meet at least six (6) times a year with three (3) meetings being in person and three (3) meetings via tele-conference (between each meeting in person).

12.2 Quorum for meeting of Directors

At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is such number as is determined by the Directors and, unless so determined, is three (3).

12.3 Continuing Directors

In the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum or of convening a general meeting of the Company.

12.4 Telephone Meetings etc

Any Director may vote on any proposed resolution of the Directors by telephone or any other communications equipment provided all persons participating are able to hear each other.

12.5 Convening Meetings

A Director may at any time, and a secretary shall, on the requisition of a Director, convene a meeting of the Directors.

12.6 Board Decisions

Subject to this Constitution, questions arising at a meeting of Directors shall be decided by a majority

of votes of Directors present and voting and any such decision shall for all purposes be deemed a decision of the Directors.

12.7 Casting Vote

In the case of an equality of votes at a Directors' meeting, the Chairman of the meeting shall have a second or casting vote.

12.8 Interested Directors

A Director shall be entitled to vote in respect of any contract or arrangement with the Company in which he is interested or any matter arising in connection therewith provided that he has previously disclosed his interest and the extent of this interest in the manner required by the Corporations Law.

13. ALTERNATE DIRECTOR

13.1 Appointment

A Director may, with the approval of the other Directors, appoint a person (whether a member of the Company or not) to be an alternate Director in his place during such period (not exceeding twelve (12) months) as he thinks fit.

13.2 Rights of Alternate Director

An alternate Director is entitled to notice of meetings of the Directors and, if the appointor is not present at such a meeting, is entitled to attend and vote in his stead.

13.3 Powers of Alternate Director

An alternate Director may exercise any powers that the appointor may exercise and the exercise of any such power by the alternate Director shall be deemed to be the exercise of the power by the appointor.

13.4 Termination of Appointment

The appointment of an alternate Director may be terminated at any time by the appointor notwithstanding that the period of the appointment of the alternate Director has not expired, and terminates in any event if the appointor vacates office as a Director.

13.5 Manner of Appointment and Termination

An appointment, or the termination of an appointment, of an alternate Director shall be effected by a notice in writing signed by the Director who makes or made the appointment and served on the Company.

14. COMMITTEES

14.1 Delegation to Committee

The Directors may delegate any of their powers to a committee or committees consisting of such of their number and such other person as they think fit.

14.2 Powers of Committee

A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the Directors and a power so exercised shall be deemed to have been exercised by the Directors.

14.3 Chairman

The members of such a committee may elect one of their number as chairman of their meetings.

14.4 Where No Chairman

Where such a meeting is held and:

- 14.4.1 a chairman has not been elected as provided by clause 14.3; or
- 14.4.2 the chairman is not present within ten (10) minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present may elect one of their number to be chairman of the meeting.

14.5 Manner of Meeting

A committee may meet and adjourn as it thinks proper.

14.6 Committee Decisions

Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.

15. RESOLUTION IN WRITING

15.1 Signing a Document

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

15.2 Two or More Documents

For the purposes of clause 15, two (2) or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

16. ACTS OF DIRECTORS

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

17. CHAIRMAN

- 17.1 As soon as possible after each annual general meeting, the Board shall elect from amongst the Directors a Chairman and Deputy Chairman.
- 17.2 The Chairman shall be elected from amongst the "Member Elected Directors."
- 17.3 The Chairman shall have the power to call general meetings of the Company and meetings of the Board or of any Committees.
- 17.4 The Chairman shall chair Board, Committee and general meetings except that in the absence of the Chairman and the Deputy Chairman or, at the request of the Chairman or of a majority of the meeting, another Director may be elected to chair the meeting.
- 17.5 The Chairman shall be responsible for preparing the agenda for Board and general meetings.

- 17.6 The Chairman shall act as spokesperson unless an alternate spokesperson has been appointed by the Board. The spokesperson shall make statements in accordance with previously agreed policy, or in an emergency following consultation with at least one half of the remaining directors.
- 17.7 The Chairman or at least half plus one of the directors may authorise any group or individual to represent the Company before any Government, Governmental or other body or committee or to make statements or express views on behalf of the Company other than those authorised by those persons. Except as aforesaid no member of the Company or any representative of a member shall make any statement or express any view which purports to be a statement or view of the Company or having been made on behalf of or with the concurrence of the Company.
- 17.8 The Chairman shall be bound by the decisions of the Board.

18. DEPUTY CHAIRMAN

- 18.1 The Deputy Chairman shall act as the Chairman in the absence of the Chairman.
- 18.2 In such case as the office of Chairman is vacated, the Deputy-Chairman shall assume the office of Chairman.

19. SECRETARY

- 19.1 A Secretary appointed by the Board shall publicise meetings of the Board, Committees and general meetings in accordance with the provisions of this Constitution and shall also arrange for decisions of the Board to be taken by telephone link-up or by postal votes.
- 19.2 The Secretary shall circulate to Directors the agenda and matter to be decided upon at least 10 days prior to meeting of the Board by telephone link up.
- 19.3 The Secretary shall circulate to members of the Board a written account of the proceedings and decisions of the Board.
- 19.4 The Secretary shall cause records to be kept of the business of the Company including the Constitution, policies, records of members, a register of minutes of meetings and of notices, a file of correspondence and records of submissions or reports made by or on behalf of the Company.
- 19.5 In the absence of the Secretary, a member of the Board shall be elected as minutes secretary.

20. SEAL

20.1 Safe Custody

The Directors shall provide for the safe custody of the seal.

20.2 Use of Seal

The seal shall be used only by the authority of the Board, or of a committee of the Directors authorized by the Directors to authorise the use of the seal, and every document to which the seal is affixed shall be signed by a Director and be countersigned by another Director, a secretary or another person appointed by the Directors for the purpose.

21. ACCOUNTS

21.1 Accounts to be Kept

The Board shall cause proper accounting and records to be kept and shall distribute 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 thereon as required by the Law.

21.2 Inspection

The Board shall from time to time determine at what times and places and under what conditions or regulations the accounting and other records of the Company shall be open to the inspection of members not being members of the Board, and no member (not being a member of the Board) shall have any right of inspecting any account or book or paper of the Company except as conferred by statute or authorised by the Board or by the Company in General Meeting.

22. AUDIT

A properly qualified Auditor or Auditors shall be appointed and his or their remuneration fixed and duties regulated in accordance with the Law.

23. OFFICERS: INDEMNITIES AND INSURANCE

23.1 Indemnities

To the extent permitted by law:

- 23.1.1 every person who is or has been an Officer of the Company or of a subsidiary of the Company will be indemnified out of the property of the Company against any liability for costs and expenses incurred by that person in defending any proceedings in which judgment is given in that person's favour, or in which the person is acquitted, or in connection with an application in relation to any proceedings in which the Court grants relief to the person under the Law; and
- 23.1.2 every person who is or has been an Officer of the Company or of a subsidiary of the Company will be indemnified out of the property of the Company against any liability to another person (other than the Company or a related body corporate of the Company) where the liability is incurred by the Officer in his or her capacity as an Officer of the Company or a subsidiary of the Company PROVIDED THAT this indemnity shall not apply where the liability arises out of conduct involving a lack of good faith.

23.2 Insurance

To the extent permitted by law the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer of the Company or of a subsidiary of the Company against a liability:

- 23.2.1 incurred by the person in his or her capacity as an Officer of the Company or a subsidiary of the Company PROVIDED THAT the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a subsidiary of the Company or a contravention of Section 232(5) or (6) of the Law; or
- 23.2.2 for costs and expenses incurred by that person in defending the proceedings, whatever their outcome.

23.3 Interpretation

In clause 23:-

- 23.3.1 the term "proceedings" means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in his or her capacity as an Officer of the Company or of a subsidiary of the Company (including proceedings alleging that he or she was guilty of negligence, default, breach of trust or breach of duty in relation to the Company or a subsidiary of the Company); and
- 23.3.2 the term "Officer" has the meaning given to that term in Section 241(4) of the Law and includes every member of the Board.

24. NOTICES

24.1 Service

A notice may be given by the Company to any member either by serving it on him personally or by sending it by post to such member at his address as shown in the register of members or the address supplied by such member to the Company for the giving of notices to the member.

24.2 Deemed Receipt

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.

24.3 Representatives

A notice may be given by the Company to a person entitled to the privileges of membership in consequence of the death or bankruptcy of a member by serving it on the member personally or by sending it to the member by post addressed to the member by name, or by the title of representative of the deceased or assignee of the bankrupt, or by any like description, at the address (if any) within Australia supplied for the purpose by the person or, if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred.

24.4 Notice of general meeting

Notice of every general meeting shall be given in the manner authorized by this clause 24 to:

- 24.4.1 every member;
- 24.4.2 every person entitled to the privileges of membership in consequence of the death or bankruptcy of a member who, but for death or bankruptcy of such member, would be entitled to receive notice of the meeting; and
- 24.4.3 the auditor for the time being of the Company, and no other person is entitled to receive notices of general meetings.