

*Corporations Act 2001*

**BEE INDUSTRY COUNCIL  
OF  
WESTERN AUSTRALIA LIMITED**

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**CONSTITUTION**

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**Date: 21<sup>st</sup> October 2022**

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## CORPORATIONS ACT 2001 (CTH)

A company limited by guarantee and not having a share capital

# CONSTITUTION OF BEE INDUSTRY COUNCIL OF WESTERN AUSTRALIA LIMITED

## Preliminary

### 1. Name of company

The name of the company is Bee Industry Council of Western Australia Limited. It is known as BICWA in abbreviated form.

### 2. Type of company

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

### 3. Constitution and replaceable rules

The Replaceable Rules contained in the Act do not apply to the company.

### 4. Liability of members limited to guarantee

4.1 The liability of members is limited to the amount of the guarantee in clause 4.2.

4.2 The liability of the members is limited. Each member must contribute an amount of not more than one dollar (\$1.00) ("guarantee") to the property of the company if the company is wound up during the member's membership or within twelve (12) months after such membership ceases. This contribution is required for:

- (a) payment of the company's debts and liabilities incurred before the member ceased to be a member; and, or
- (b) costs charges and expenses of winding up; and
- (c) an adjustment of the rights of contributories among themselves.

### 5. Definitions and Interpretation

5.1 In this constitution:

**"Act"** means the *Corporations Act 2001* (Cth) including any amendment or re-enactment thereof for the time being in force;

**"APC"** means the APC Beekeepers Producers' Committee established under section 11 of the *Agricultural Produce Commission Act 1988*.

**"Board"** means the board of directors of this company;

**"business day"** means a day that is not a Saturday, Sunday or public holiday in the State in which the

company is incorporated;

**“chairperson”** means the person elected from time to time as chairperson of the Board in accordance with this constitution;

**“committee”** means a committee of directors formed pursuant to clause 44.1;

**"company"** means the company abovenamed, being a not-for-profit company limited by guarantee which is established to be and continue as a non-profit company;

**"constitution"** means this constitution and all supplementary substituted or amending constitutions for the time being in force;

**“director”** includes any person occupying the position of a director of the company by whatever name called;

**“directors”** or the **“Board”** means the directors from the time being or such number of them as have authority to act for the company;

**“electronic voting system”** means a secured system based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, in such a manner that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralised server with adequate cyber security;

**"Hive"** means a honey producing hive;

**“members”** means the person(s) admitted as members of the company pursuant to clause 10.1;

**“office”** means the registered office of the company for the time being;

**“person”** includes an individual, incorporated entity or non-incorporated entity;

**“register”** means the register of members to be kept pursuant to the Act;

**"secretary"** means any person appointed to perform the duties of a secretary of the company;

**"State"** means the State of Western Australia.

5.2 Words or expressions contained in this constitution shall be interpreted in accordance with the *Corporations Act 2001* (“Act”) as in force at the date on which this constitution becomes binding on the company.

5.3 In this constitution unless the context otherwise requires:

- (a) words (including defined expressions) importing the singular include the plural and vice versa;
- (b) words (including defined expressions) importing any gender include the other genders;
- (c) words (including defined expressions) importing persons shall include corporations and bodies politic;
- (d) a reference to a statute ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (e) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes telegram, telex, email and facsimile transmission;
- (f) reference to a month means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the last day of the next succeeding calendar month;

5.4 Headings do not affect the interpretation of this constitution.

## Non-profit purposes and powers

### 6. Objects

The not-for-profit objects for which the company has been established are to foster, promote and enhance a sustainable bee industry in Western Australia and to protect the interests of producers and co-dependent industries and organisations, and more specifically:

- 6.1 to foster, promote and enhance the viability of its members and all beekeepers and related or co-dependent industries in Western Australia;
- 6.2 to foster, promote, enhance and value-add the unique features of Western Australian honey and other bee products to Australian and international markets;
- 6.3 to sustainably increase industry output and employment opportunities, and to encourage and support new industry participants;
- 6.4 to foster, promote, enhance and fund research into bees and bee products;
- 6.5 to foster, promote and enhance biosecurity in Western Australia;
- 6.6 to foster, promote and support other organisations supporting the objectives of BICWA;
- 6.7 to foster and promote an environmentally sustainable bee industry;
- 6.8 to source funding from individuals and organisations, the APC and government, to promote the objectives of BICWA;
- 6.9 to ensure the bee industry has access to the necessary resources to secure its advancement and viability;
- 6.10 to represent industry policy at all levels of government (federal, state, local) as well as private enterprise and the public;
- 6.11 to propose, promote, support and seek amendments to any legislation at all levels of government (federal, state, local) or measures that may affect the industry;
- 6.12 to assist and, or cooperate with any organisation, body, association, person or persons in the best interests of BICWA and its members;
- 6.13 to enhance the industry by encouraging the adoption of best practice in production, quality assurance, presentation and promotion of its products;
- 6.14 to promote high standards of education and training for all bee industries;
- 6.15 to enhance the industry through promotional and public relations campaigns in the best interests of the industry and BICWA where appropriate;
- 6.16 to gather and distribute to members, industry intelligence from local and international sources, and to function as a channel for information exchange within Australia and between Australia and other countries;

- 6.17 to enhance the development of all industry sectors through education and extension to interdependent industries within the public and agricultural communities;
- 6.18 to act in any way not defined in these objects considered advisable in the best interests of the industry;
- 6.19 to be accountable to the members of the company;
- 6.20 to ensure that the assets and income of BICWA shall be applied solely in furtherance of its mission and objectives, and no portion shall be distributed directly or indirectly to its officers and employees, except as a bona fide compensation for services rendered on behalf of the company.

## **7. Powers**

Subject to clause 8, the company has the powers of an individual and all the powers of a company limited by guarantee under the Act which may only be used to carry out its purpose(s) as set out in clause 6.

## **8. Not-for-profit**

- 8.1 The income and property of the company must be applied solely towards the promotion of the objects of the company as set out in this constitution and no portion of it is to be paid, distributed or transferred directly or indirectly by way of profit to members, except as provided for in clause 6.20, clause 8.2 and clause 67.3.
- 8.2 Clause 8.1 does not prevent the payment in good faith:
  - (a) of remuneration to any officers or employees of the company in return for any services rendered to the company or expenses properly incurred at fair and reasonable rates or rates more favourable to the company;
  - (b) to a member in carrying out the company's non-profit purpose(s);
  - (c) for goods supplied in the ordinary and usual course of business;
  - (d) of interest at a reasonable and proper rate on money borrowed from any member; or
  - (e) of reasonable and proper rent for premises demised or let by any member to the company.
- 8.3 For the avoidance of doubt, in the event of the winding up or dissolution of the company, the amount that remains after such winding up or dissolution and the satisfaction of all debts and liabilities of the company shall be dealt with in accordance with clause 67.

## **9. Amending the constitution**

- 9.1 Subject to clause 9.2, the members may amend this constitution by passing a special resolution.
- 9.2 The members must not pass a special resolution that amends this constitution if passing it would cause the company to no longer be a non-profit company.



## Members

### 10. Membership and register of members

- 10.1 The members of the company shall be the persons who from time to time are admitted by the Board to membership of the company in accordance with this constitution.
- 10.2 The company must establish and maintain a register of members. The secretary shall keep at the office the register and shall enter in it:
- (a) for each current member:
    - (i) the member's full name;
    - (ii) the address of the member and, or any alternative address nominated by the member for service of notices;
    - (iii) the date upon which the member was entered on to the register; and
    - (iv) The class of membership
  - (b) for each person who ceases to be a member, the date of cessation of membership with such record being kept for seven (7) years.
- 10.3 The company must give current members access to the register of members.
- 10.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members and must not be used for any other purpose.

### 11. Who can apply for membership

- 11.1 Every applicant for membership of the company shall be a person, which supports the objects of the company and agrees to comply with the company's constitution including paying the guarantee under clause 4.
- 11.2 The classes of membership shall be:
- (a) Beekeeper members

A beekeeper member shall be a person which:

    - (i) pays a fee for service charge to the APC; or
    - (ii) pays a hive brand registration fee to the Department of Primary Industry and Regional Development\_
  - (b) Alliance Partner members

Alliance Partner members shall be persons, which have a commercial involvement and are associated with the beekeeping or agriculture industries and interested in pursuing the objects of the company.
  - (c) Friends of BICWA

Friends of BICWA shall be persons, which are associated with the beekeeping or agriculture industries or otherwise interested in pursuing the objects of the company.

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

- 12.1 An applicant under clause 11 may apply to become a member of the company by writing to the secretary stating that the applicant:
- (a) wishes to become a member;
  - (b) supports the objects of the company;
  - (c) agrees to comply with the company's constitution, including paying the guarantee under clause 4 if required,
- and nominates the class of membership sought.
- 12.2 Where the application is for the class of Beekeeper member, in addition to the matters required under clause 12.1, the applicant must also provide the applicant's then current number of bee hives registered with APC.
- 12.3 The application for membership shall be signed by the applicant and if applicable the applicant's proposer and shall be in such form as the Board from time to time prescribes. The Board may approve an application even if the application does not refer to the matters listed in subclauses 12.1(a)-(c) above, in which event it will be deemed that the applicant agrees to those matters.

## **13. Directors to determine membership**

- 13.1 The directors:
- (a) shall determine the criteria to be satisfied for the admission of members to the company;
  - (b) may amend or vary this criteria in their absolute discretion;
  - (c) shall provide upon request details of the criteria for members at the relevant date.
- 13.2 The directors must consider an application for membership within a reasonable time, and if practicable, at the next meeting of the Board after the receipt by the company of any application for membership and the Board shall thereupon determine at its absolute discretion upon the admission or rejection of the applicant. In no case shall the Board be required to give any reason for the rejection of an applicant.
- 13.3 If the directors approve an application for membership the secretary:
- (a) must as soon as possible enter the new member on the register of members and the applicant will commence membership on the date of such registration;
  - (b) shall forthwith send to the applicant written notice of acceptance and the membership commencement date, together with a request for payment of the entrance fee and first annual subscription, where applicable.
- 13.4 Upon payment of the entrance fee and first annual subscription (where applicable) the applicant shall become a member of the company provided nevertheless that if such payments 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 applicant for membership of the company.
- 13.5 If the directors reject the application the secretary must write to the applicant as soon as possible advising that the application has been rejected but is not required to provide reasons.

## **14. Cessation of membership**

14.1 A member immediately ceases being a member in the event of:

- (a) the death of the member; or
- (b) in the case of an incorporated member, being wound up or otherwise dissolved or deregistered; or
- (c) the member resigning by writing to the secretary; or
- (d) the member being expelled under clause 17.4(d); or
- (e) the member failing to respond within two (2) months to a written request from the secretary to confirm in writing that the member wishes to remain a member.

14.2 In addition to the matters set out in clause 14.1, a Beekeeper member will immediately cease being a member where the member:

- (a) ceases to be a beekeeper;
- (b) does not pay, for any reason:
  - (i) the fee for service charge to the APC; or
  - (ii) the hive brand registration fee to the Department of Primary Industry and Regional Development,when such fees become due for payment.

## **15. Membership fees and subscriptions**

15.1 In respect to membership fees and annual subscriptions:

- (a) no membership fee or annual subscription shall be payable by a Beekeeper member;
- (b) the entrance fee and annual subscription payable by an Alliance Partner member or a Friend of BICWA member shall be such as the Board shall from time to time prescribe; and
- (c) all annual subscriptions shall become due and payable in advance on their anniversary date.

15.2 If the subscription of an Alliance Partner member or a Friend of BICWA 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 has been sent to the member by the secretary or treasurer, 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.

15.3 A member may at any time by giving notice in writing to the secretary resign as a member of the company but shall continue to be liable for any annual subscription and all arrears due and unpaid at the date of resignation and for all other moneys due by the member to the company and in addition for any sum not exceeding one dollar (\$1.00) for which the member is liable as a member of the company under clause 4 of this constitution.

## **Dispute resolution and disciplinary procedures**

### **16. Dispute resolution**

16.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and either one or more members or directors or the company.

- 16.2 A member (which shall include a member expelled under clause 17.4(d)) must not commence a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 17 until the disciplinary procedure is completed.
- 16.3 Those involved in a dispute must attempt to resolve matters between themselves within fourteen (14) days of knowing about it. If not resolved within such time, those involved in the dispute must within ten (10) days:
- (a) inform the directors in writing about the dispute;
  - (b) agree or request that a mediator be appointed; and
  - (c) attempt in good faith to settle the dispute by mediation.
- 16.4 The mediator must:
- (a) be chosen by agreement of those involved in the dispute; and
  - (b) where those involved do not agree:
    - (i) in relation to disputes between members, be a person chosen by directors; or
    - (ii) in respect to other disputes, be a person chosen either by the Commissioner of the Australian Charities and Not-for-profits Commission or the President of the Law Society of Western Australia.
- 16.5 A mediator chosen by the directors under clause 16.4(b)(i):
- (a) may be a member or former member of the company;
  - (b) must not have a personal interest in the dispute; and
  - (c) must not be biased towards or against anyone involved in the dispute.
- 16.6 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable opportunity to be heard;
  - (b) allow those involved a reasonable opportunity to review any written statements;
  - (c) ensure that those involved in the dispute are provided with natural justice; and
  - (d) not make a decision on the dispute.

## **17. Disciplining members**

- 17.1 In accordance with this clause the directors may resolve to warn, suspend or expel a member from the company if the directors consider that:
- (a) the member has breached this constitution; or
  - (b) the member's behaviour is causing, has caused, or is likely to cause harm to the company.
- 17.2 At least fourteen (14) days before the directors' meeting at which a resolution under clause 17.1 will be considered, the secretary must notify the member in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the member;
  - (b) that the resolution will be considered at a directors' meeting and the date of that meeting;
  - (c) of what the member is said to have done or not done;
  - (d) of the nature of the resolution that has been proposed; and
  - (e) that the member may provide to the directors an explanation and the details of how to do so.

- 17.3 Prior to the directors passing any resolution under clause 17.1 the member must be given an opportunity to explain or defend himself or herself by:
- (a) providing the directors with a written explanation before the directors' meeting; and, or
  - (b) speaking at the meeting.
- 17.4 After considering any explanation under clause 17.3 the directors may:
- (a) take no further action;
  - (b) warn the member;
  - (c) suspend the member's rights as a member for a period of no more than 12 months;
  - (d) expel the member;
  - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause); or
  - (f) require the matter to be determined at a general meeting.
- 17.5 The directors cannot fine a member.
- 17.6 The secretary must give written notice to the member of the decision under clause 17.4 as soon as possible after the decision is made.
- 17.7 Disciplinary procedures must be completed as soon as reasonably practicable.
- 17.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.
- 17.9 On and from the date notice is provided pursuant to clause 14.2 until the conclusion of the disciplinary process, including as to any period of suspension, the member, and where the member is a director, the director, shall not be entitled to exercise any voting rights, where applicable.

## General meetings of members

### **18. General meetings called by directors**

- 18.1 The directors may call a general meeting whenever they think fit.
- 18.2 If members with at least five percent (5%) of the votes that may be cast at a general meeting make a written request to the company for a general meeting to be held, the directors must:
- (a) within twenty one (21) days of the members' request, give all members notice of a general meeting; and
  - (b) hold the general meeting within two (2) months of the members' request.
- 18.3 The percentage of votes that members have (in respect to clause 18.2) is to be calculated as at midnight before the members' request is given to the company.
- 18.4 The members who make the request for a general meeting must:
- (a) state in the request any resolution to be proposed at the meeting;
  - (b) sign the request; and
  - (c) give the request to the company.
- 18.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

### **19. General meetings called by members**

- 19.1 If the directors do not call the meeting within twenty one (21) days of being requested under clause 18.2 then fifty percent (50%) or more of the members who made the request may call and arrange to hold a general meeting.
- 19.2 To call and hold a meeting under clause 19.1 the members must:
- (a) as far as possible, follow the procedures for general meetings set out in this constitution;
  - (b) call the meeting using the list of members on the company's member register, which the company must provide at no cost to the members making the request;
  - (c) hold the general meeting within two (2) months after the request has been given to the company.
- 19.3 The company must pay the members who request the general meeting any reasonable expense that the members incur as a result of the directors' failure to call and hold the meeting.
- 19.4 All business will be special that is transacted at:
- (a) a general meeting not being an annual general meeting; or
  - (b) an annual general meeting, with the exception of:
    - (i) the confirmation of the minutes of the preceding meeting;
    - (ii) the receipt and consideration of the balance sheet, the profit and loss statement and the reports of the directors and auditors (if any); and
    - (iii) the transaction of any business which under the Act or this constitution is required to be transacted.

19.5 All meetings other than the annual general meetings shall be called general meetings.

## **20. Annual general meeting**

20.1 An annual general meeting of the company shall be held in accordance with the provisions of the Act and must be held at least once in every calendar year.

20.2 The business of an annual general meeting may include:

- (a) a review of the company's activities;
- (b) a review of the company's finances;
- (c) any auditor's report;
- (d) the election of directors; and
- (e) the appointment and payment of auditors (if any),

whether or not these matters are set out in the notice of meeting.

20.3 Prior to, or at an annual general meeting, the directors must give information to the members in relation to the company's activities and finances during the period since the previous annual general meeting.

20.4 The chairperson of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions and, or make comments about the management of the company.

## **21. Notice of general meetings**

21.1 Notice of a general meeting must be given to:

- (a) each member entitled to vote at a meeting;
- (b) each director; and
- (c) the auditor (if any).

21.2 Notice of a general meeting must be provided in writing at least twenty one (21) days prior to the meeting (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and in case of special business the general nature of that business.

21.3 Subject to clause 21.4, notice of a meeting may be provided less than twenty one (21) days before the meeting if:

- (a) for an annual general meeting, all the members entitled to attend and vote at the annual general meeting agree beforehand; or
- (b) for any other general meeting, members with at least ninety five percent (95%) of the votes that may be cast at the meeting agree beforehand.

21.4 Notice of a meeting cannot be provided less than twenty one (21) days before the meeting if a resolution will be moved to:

- (a) remove a director;
- (b) appoint a director in order to replace a director who was removed; or
- (c) remove an auditor.

21.5 If a general meeting is adjourned for one (1) month or more, the members must be given new notice of the resumed meeting.

## **22. Quorum at general meetings**

22.1 To hold a general meeting, at least twenty (20) members (a quorum) must be present (in person, by proxy or by representative) for the duration of the meeting. For the purpose of this clause "member" includes a person attending as a proxy or representing a member corporation. In determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one (1) member).

22.2 No business may be conducted at a general meeting if a quorum is not present.

22.3 If within thirty (30) minutes from the commencement time stated in the notice of general meeting there is no quorum present, the general meeting, if convened upon the requisition of members, shall be dissolved, and in any other case it shall stand adjourned to the date, time and place specified by the chairperson. If the chairperson does not specify one or more of those matters, the meeting is adjourned to:

- (a) if the date is not specified, to the same day in the next week;
- (b) if the time is not specified, to the same time; and
- (c) if the place is not specified, the same place,

or to such other day and at such other time and place as the Board may determine.

22.4 If at the resumed meeting a quorum is not present within thirty (30) minutes after the appointed commencement time the meeting is cancelled.

## **23. Auditor's right to attend meetings**

23.1 The auditor (if any) is entitled to attend any general meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

23.2 The company must give the auditor (if any) any communications relating to the general meeting that a member of the company is entitled to receive.

## **24. Representatives of members**

24.1 A member that is incorporated or a partnership may appoint as a representative:

- (a) a person to represent the member at meetings; and
- (b) the same or another individual for the purpose of being appointed or elected as a director.



24.2 The appointment of a representative by a member must:

- (a) be in writing;
- (b) include the name of the representative;
- (c) be signed on behalf of the member; and
- (d) be given to the company or, for representation at a meeting, be given to the chairperson prior to the meeting commencing.

24.3 A representative has all of the rights of a member relevant to the purposes of the appointment as a representative.

24.4 The appointment may be standing (ongoing).

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

25.1 The company may hold a general meeting at two (2) or more venues using any technology (including but not limited to video conferencing) that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard and to vote.

25.2 Anyone using this technology is taken to be present in person at the meeting.

## **26. Chairperson for general meetings**

26.1 The elected chairperson is entitled to chair general meetings.

26.2 The members present and entitled to vote at a general meeting may choose a director or member to be the chairperson for that meeting if:

- (a) there is no elected chairperson; or
- (b) the elected chairperson is not present within thirty (30) minutes after the commencement time set for the meeting;
- (c) the elected chairperson is present but is unwilling to act in such role at the meeting.

## **27. Role of the chairperson**

27.1 The chairperson is responsible for the conduct of the general meeting and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).

27.2 The chairperson does not have a casting vote.

## **28. Adjournment of meetings**

28.1 If a quorum is not present a general meeting must be adjourned if a majority of members present direct the chairperson to adjourn it.

28.2 Only unfinished business may be dealt with at a meeting which has been resumed following an adjournment.

## Members' resolutions and statements

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

- 29.1 Members with at least five percent (5%) of the votes that may be cast on a resolution may give:
- (a) written notice to the company of a resolution which the members propose to move at a general meeting (members' resolution); and, or
  - (b) a written request to the company that the company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (members' statement).
- 29.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 29.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 29.4 Separate copies of a document setting out the notice or request may be signed by members provided that the wording is the same in each copy.
- 29.5 The percentage of votes that members have is to be calculated as at midnight before the request or notice is given to the company.
- 29.6 If the company has been given notice of a members' resolution under clause 29.1 the resolution must be considered at the next general meeting held not more than two (2) months after the notice is given.
- 29.7 This clause does not limit any other right that a member has to propose a resolution at a general meeting.

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

- 30.1 If the company has been given a notice or request under clause 29:
- (a) in time to send to members the notice of proposed members' resolution or a copy of the members' statement together with notice of the meeting, it must do so at the company's cost; or
  - (b) too late to send to members the notice of proposed members' resolution or a copy of the members' statement together with notice of the meeting then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the company in giving members notice of the proposed members' resolution or a copy of the members' statement unless resolved otherwise under clause 30.2.
- 30.2 Notwithstanding clause 30.1(b), the members may pass a resolution at a general meeting that the company pay the expenses incurred under such clause.
- 30.3 The company is not required to send to members the proposed members' resolution or a copy of the members' statement if:
- (a) the document exceeds one thousand (1,000) words;
  - (b) the directors' consider it may be defamatory;

- (c) clause 30.1(b) applies, and the members who proposed the resolution or made the request have not paid the company sufficient money to cover the cost of sending to members the notice of the proposed members' resolution or a copy of the members' statement; or
- (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a general meeting or is otherwise not a valid resolution able to be put to the members.

**31. Deleted**

## Voting at general meetings

**32. Votes of members**

- 32.1 Each Beekeeper member has one (1) vote, and 1 (one) vote for each registered Hive.
- 32.2 Alliance Partners and Friends of BICWA members shall not be entitled to vote on the election of directors pursuant to clause 39, but otherwise each such member shall be entitled to one (1) vote.
- 32.3 No member shall be entitled to vote at any general meeting if his or her annual subscription shall be more than one (1) month in arrears at the date of the meeting.

**33. Challenge to member's right to vote**

- 33.1 A member or the chairperson may only challenge a person's right to vote at a general meeting at that meeting. If such challenge is made the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

**34. How voting is conducted**

- 34.1 Voting at meetings must be conducted and decided by:
  - (a) a show of hands;
  - (b) a vote in writing;
  - (c) where a meeting is held using technology, by an electronic voting system; or
  - (d) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 34.2 Prior to a vote being taken the chairperson must inform the meeting whether any proxy votes have been received and if so, how the proxy votes will be cast.
- 34.3 On a show of hands the chairperson's decision is conclusive evidence of the result of the vote.
- 34.4 The chairperson and the minutes of the meeting do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### **35. Votes in writing**

- 35.1 A vote in writing may be demanded on any resolution instead of, or after a vote by a show of hands by:
- (a) one (1) member present in person or by proxy or representative;
  - (b) members present with at least five percent (5%) of the votes that may be passed on the resolution on the vote in writing (calculated as at midnight before the demand for the vote in writing);
  - (c) the chairperson.
- 35.2 A vote in writing may be demanded:
- (a) before a vote is taken;
  - (b) before the voting results on a show of hands is declared; or
  - (c) immediately after the voting result on a show of hands is declared.
- 35.3 A vote in writing must be taken when and how the chairperson directs, unless clause 35.4 applies.
- 35.4 A vote in writing must be held immediately if it is demanded under clause 35.1:
- (a) for the election of a chairperson under clause 26.2; or
  - (b) to decide whether to adjourn the meeting.
- 35.5 A demand for a vote in writing may be withdrawn.

### **36. Appointment of proxy**

- 36.1 A member may appoint a proxy or attorney to attend and vote (where entitled) at a general meeting on the member's behalf.
- 36.2 A proxy does not need to be a member.
- 36.3 A proxy appointed to attend and vote on behalf of a member has the same rights as the member to:
- (a) speak at the meeting;
  - (b) vote in a vote in writing (but only to the extent permitted by the appointment); and
  - (c) join in to demand a vote in writing under clause 35.1.
- 36.4 The instrument appointing a proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address;
  - (b) the company's name (if applicable);
  - (c) the proxy's name or the name of the office held by the proxy; and
  - (d) the meeting(s) at which the appointment may be used.
- 36.5 A proxy appointment may be standing (ongoing).
- 36.6 Proxy forms must be received by the company prior to the commencement of a meeting at the address stated in the notice as provided for in clause 21.5 or at the company's registered address.
- 36.7 A proxy does not have the authority to speak and vote on behalf of a member at a meeting while the member is also present.

36.8 Unless the company receives written notice prior to the commencement or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:

- (a) dies;
- (b) is mentally incapacitated;
- (c) revokes the proxy's appointment; or
- (d) revokes the authority of a representative or agent who appointed the proxy.

36.9 The appointment of a proxy may specify the manner in which the proxy must vote on a particular resolution. Unless otherwise instructed the proxy may vote as he or she thinks fit.

36.10 The instrument appointing a proxy may be in the following form or in a common or usual form.

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

My proxy is hereby authorised to vote \*in favour of/\*against the following resolutions:-

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20 .

Note: In the event of the member desiring to vote for or against any resolution the member shall instruct the proxy accordingly and unless otherwise instructed, the proxy may vote as he or she thinks fit.

### **37. Voting by proxy**

37.1 A proxy is not entitled to vote:

- (a) on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands); or
- (b) on the election of directors where the election is conducted by electronic voting system.

37.2 When a vote in writing is held, a proxy:

- (a) does not need to vote unless the proxy appointment specifies the way the proxy must vote;
- (b) must vote in the manner directed by the appointment if specified; and
- (c) if the proxy is also a member or holds more than one proxy appointment, may cast the votes held in different ways.

37.3 Prior to a vote being taken the chairperson must inform the meeting whether any proxy votes have been received and if so, how the proxy votes will be cast.

## Directors

### **38. Number of directors**

- 38.1 The company must have at least five (5) and no more than nine (9) directors.
- 38.2 No less than five (5) directors will be beekeeper members of the company.
- 38.3 If the number of directors at any time falls below five (5), the directors shall not act in the affairs of the company (other than to call a general meeting and appoint additional directors) until the number of directors is made up to at least five (5) but for no other purpose.
- 38.4 The board may appoint no more than 3 independents directors

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

- 39.1 The initial directors are the persons who have agreed to act as directors and who are named as proposed directors in the application for registration of the company.
- 39.2 Apart from the initial directors and directors appointed under clause 39.6 the members may elect a director:
  - (a) by a resolution passed in a general meeting; or
  - (b) by a resolution passed by members in an electronic voting system; or
  - (c) as otherwise provided in this constitution
- 39.3 Each of the directors must be appointed by a separate resolution, unless:
  - (a) the members present have first passed a resolution that the appointments may be voted on together; and
  - (b) no votes were cast against that resolution.
- 39.4 The company may from time to time by ordinary resolution passed at a general meeting increase or reduce the number of directors.
- 39.5 A person is eligible for election as a director of the company if the person:
  - (a) is a member of the company, or a representative of a member of the company appointed under clause 24; or has expertise which the members or directors believe will contribute to the governance and objects of the company;
  - (b) is nominated by one member or a representative of a member entitled to vote (unless the person has been previously elected as a director at a general meeting and has remained a director since that meeting);
  - (c) gives the company a signed consent to act as a director of the company; and
  - (d) is not ineligible to be a director under the Act.

- 39.6 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
- (a) is a member of the company, or a representative of a member of the company; or
  - (b) has expertise which the members or directors believe will contribute to the governance and objects of the company;
  - (c) gives the company a signed consent to act as a director of the company; and
  - (d) is eligible to be a director under the Act.

#### **40. Election of chairperson and other directors**

- 40.1 The Board of the company shall consist of directors duly elected or appointed in accordance with this constitution.
- 40.2 The directors must elect a director as the company's chairperson.
- 40.3 The Board shall have power at any time, and from time to time, to appoint any person to the Board, either to fill a casual vacancy or appoint other directors so that the total number of directors shall not at any time exceed the number fixed in accordance with this constitution. Any director so appointed shall hold office only until the next following annual general meeting.
- 40.4 At each annual general meeting:
- (a) any director appointed by the directors to fill a casual vacancy or as an additional director must retire; and
  - (b) at least one-third of the remaining directors must retire.
- 40.5 The directors who must retire at each annual general meeting under clause 40.4(b) will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) who are to retire will be decided by lot unless they agree otherwise.
- 40.6 Other than a director appointed under clause 39.6, a director's term of office commences at the conclusion of the annual general meeting at which he or she is elected and concludes at the end of the annual general meeting at which he or she retires.
- 40.7 Each director must retire at least once every three (3) years.
- 40.8 A director who retires under clause 40.4 and clause 40.7 may nominate for election or re-election, subject to the provisions of clause 40.9.
- 40.9 A director who has held office for a continuous period of nine (9) years or more may only be re-appointed or re-elected by a special resolution.
- 40.10 Directors shall be elected:
- (a) at an annual general meeting of the company; or
  - (b) under an electronic voting system prior to an annual general meeting, where the members at the annual general meeting shall be advised of the directors so elected,
- and, in either case clauses 40.11 to 40.13 shall apply.

- 40.11 Any one member or representative of an entity or director of the company shall be at liberty to nominate a person or representative of an entity, which fosters the objects of the company to serve as a director of the company.

#### **Election at the annual general meeting**

- 40.12 Where directors are to be elected at an annual general meeting, the following shall apply:
- (a) nominations, which shall be in writing and signed by the nominator shall be lodged with the secretary at least twenty one (21) days before the annual general meeting at which the election is to take place, and if on such date no nominations have been received by the company, nominations may be lodged on the day of the annual general meeting;
  - (b) a list of the candidates' names in alphabetical order, together with the names of the nominators shall be posted in a conspicuous place in the registered office of the company for at least seven (7) days immediately preceding the annual general meeting, unless the nomination is made on the day of the meeting and prior to the meeting's commencement;
  - (c) balloting lists shall be prepared (if necessary) containing the names of the candidates only in alphabetical order, and each member or the member's representative present at the annual general meeting shall be entitled to vote for any number of such candidates not exceeding the number of vacancies;
  - (d) voting shall be in accordance with clause 34.1;
  - (e) in case there shall not be sufficient number of candidates nominated the Board shall fill up the remaining vacancy or vacancies;
  - (f) no member shall be entitled to nominate a person for any office or vote if the member's annual subscription is more than one (1) month in arrears as at the date of the meeting;
  - (g) if at any ballot the number of votes cast for two (2) or more candidates is equal the chairman of the meeting will request the candidates to draw lots and if any or all decline the chairman shall draw lots for them and shall in accordance with the result thereof declare which of such candidates is successful in the ballot.

#### **Election by electronic voting**

- 40.13 Where directors are to be elected prior to an annual general meeting and by an electronic voting system, the following shall apply:
- (a) nominations, which shall be in writing and signed by the nominator shall be lodged with the secretary at least sixty (60) days before the annual general meeting, and if on such date no nominations have been received by the company, nominations may be lodged on the day of the annual general meeting and the provisions in clause 40.12 shall apply with such amendments as may be necessary;
  - (b) if at the close of nominations there are more candidates than the number of positions to be filled, a ballot will be conducted using an electronic voting system approved by the Board;
  - (c) the candidate/s who receives the highest number of votes will be elected to fill the director positions. If two or more eligible candidates get the same number of votes and at the relevant time there is only one director position to be filled the chairman may exercise a casting vote in addition to the chairman's deliberate vote.



**41. Deleted**

**42. Cessation of directorship**

42.1 A director ceases to be a director if he or she:

- (a) resigns from office by notice in writing to the company, or the period for which the director is appointed expires;
- (b) dies;
- (c) 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 benefits;
- (d) is removed as a director by a resolution of the members;
- (e) the director becomes an insolvent under administration or makes any composition or arrangement with his or her creditors or any class of them;
- (f) is a representative of a member who ceases to be a member of the company;
- (g) is a representative of a member and the member notifies the company that the representative is no longer a representative;
- (h) is absent from three (3) consecutive directors' meetings without approval from the directors; or
- (i) becomes ineligible to be a director of the company under the Act;
- (j) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare the nature of that interest as required by the Act;
- (k) ceases to be or is removed as a director pursuant to the Act;
- (l) ceases to be or is removed as a member pursuant to clause 17.

## Powers of directors

**43. Powers of directors**

43.1 The company has the powers of an individual and all the powers of a company limited by guarantee under the Act to carry out its purpose(s) as set out in clause 6 and referred to in clause 7.

43.2 The directors are responsible for managing and directing the activities of the company to achieve the purpose(s) set out in clause 6.

43.3 The directors may use all the powers of the company except for powers that under the Act or this constitution may only be used by members.

43.4 The directors cannot remove a director or auditor who may only be removed by a members' resolution at a general meeting.

43.5 The management of the business and affairs of the company is vested in the Board who in addition to the powers and authorities conferred by this constitution or otherwise may exercise all powers and do all acts and things as can be exercised or done by the company and are not required to be exercised or done by the company in general meeting.

43.6 The powers of the Board are subject to the Act, this constitution and to any regulations (not being inconsistent with this constitution) from time to time made by the company in general meeting or by the Board. No regulation made by the company in general meeting will invalidate any prior act of the Board which would have been valid if that regulation had not been made.

- 43.7 The Board may exercise all the powers of the company to borrow money and to mortgage or charge its property, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt liability, or obligation of the company.
- 43.8 The directors must decide on the responsible financial management of the company including any suitable written delegations of power under clause 44.
- 43.9 All cheques, promissory notes, 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, as the case may be, by the persons and in such other manner as the Board from time to time determines.
- 43.10 The Board shall cause minutes to be made of:
- (a) all appointments of directors;
  - (b) the names of directors present at all meetings of the company and of the Board; and
  - (c) all proceedings at all meetings of the company and of the Board.
- 43.11 Such minutes shall be signed by the chairperson of the meeting at which the proceedings were held or by the chairperson of the next succeeding meeting, or if the minutes are unavailable at the next meeting then at the earliest opportunity afforded by a subsequent meeting.

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

- 44.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the company (such as a chief executive officer) or any other person, as they consider appropriate.
- 44.2 The delegation must be recorded in the company's minute book.
- 44.3 The company may execute a document without using a common seal if the document is signed by:
- (a) two (2) directors of the company; or
  - (b) a director and the secretary.

#### **45. Proceedings of the Board**

- 45.1 The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A director may at any time and the secretary shall on the requisition of a director summon a meeting of the Board.
- 45.2 Subject to this constitution questions arising at any meeting of the Board shall be decided by a majority of votes and a determination by a majority of the directors shall for all purposes be deemed a determination of the Board. In case of an equality of votes the chairperson of the meeting shall have a second or casting vote.
- 45.3 The continuing directors may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the number fixed by or pursuant to this constitution as the necessary quorum of the Board, the continuing director or directors may act for the purpose of increasing the number of members of the Board to that number or summoning a general meeting of the company but for no other purpose.

- 45.4 The elected chairperson is entitled to preside at every meeting of the Board.
- 45.5 The Board may delegate any of its powers to committees consisting of such director or directors together with or without other person or persons approved by the Board as they think fit, and any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Board.
- 45.6 A committee may elect a chairperson to chair its meetings and if no such chairperson is elected, or if at any meeting the chairperson is not present within thirty (30) minutes after the time appointed for holding the meeting, the committee members present may choose one of their number to be chairperson of the meeting. The chairperson of the Board may choose to be the chairperson of a committee provided that he or she is a member of such committee.
- 45.7 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the committee members present, and in the case of an equality of votes the chairperson of a committee shall have a second or casting vote.
- 45.8 A committee meeting may be held at two (2) or more venues using any form of technology (including but not limited to video conferencing) provided that the committee members at each venue have a reasonable opportunity to participate in the meeting, including to hear and be heard.
- 45.9 All acts done by any meeting of the Board or of a committee or by any person acting as a director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid or that the director or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.
- 45.10 A resolution in writing signed by all of the directors for the time being entitled to receive notice of a meeting of the Board, shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more members of the Board.

#### **46. Financial records and management**

- 46.1 The Board shall cause proper accounting and records to be kept as provided for in clauses 43.8 and 43.9 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 (if any) thereon as required by the Act provided that the Board shall cause to be made out and placed before each annual general meeting a balance sheet and profit and loss account made up to date not more than five (5) months before the date of the meeting.
- 46.2 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 directors, and no member (not being a director) 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.

#### **47. Memberships fees and subscriptions**

The entrance fee and annual subscription payable by members of the company shall be such as the Board shall from time to time prescribe and all annual subscriptions shall become due on their anniversary.

#### **48. Payments to directors**

- 48.1 The company may pay fees to a director for acting as a director, and may:
- (a) pay a director for work carried out for and on behalf of the company, other than as a director, if the amount is no more than a reasonable fee for the work done; or
  - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the company.
- 48.2 Any payment made under clause 48.1 must be approved by the directors.
- 48.3 The company may pay premiums for insurance indemnifying directors, as allowed for by law including the Act and this constitution as referred to in clauses 65 and 66.

### Duties of directors

#### **49. Duties of directors**

- 49.1 The directors must comply with their duties as directors under the Act and common law and must:
- (a) exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if a director of the company;
  - (b) act in good faith in the best interests of the company and to further the not-for-profit purposes of the company as set out in clause 6;
  - (c) not misuse his or her position as a director of the company;
  - (d) not misuse information gained by him or her in the role and capacity of a director;
  - (e) disclose any perceived or actual material conflicts of interest in the manner set out in clause 50;
  - (f) ensure that the financial affairs of the company are managed responsibly; and
  - (g) not allow the company to operate while it is insolvent.

#### **50. Conflicts of interest**

- 50.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution).
- 50.2 Subject to the Act:
- (a) no Director or proposed director of the Board is disqualified from that office by:
    - (i) entering into a contract, agreement or arrangement with the company;
    - (ii) becoming or remaining a director of any company in which the company is in any way interested or which is in any way interested in the company;
  - (b) no contract, agreement or arrangement in which a director is in any way interested entered into or by way or on behalf of the company can be avoided; and
  - (c) no director who:
    - (i) enters into a contract, agreement or arrangement in which the Director has an interest;
    - or

- (ii) is a director of the other company with which the company has entered into the contract, agreement or arrangement,

is liable to account to the company for any profits or remuneration realised by that director as a result of him or her being interested or being a member of the other company.

50.3 The nature of a director's interest in any contract, agreement or arrangement must be declared by that director at a meeting of the directors in accordance with the Act as soon as practicable after the relevant facts have come to his or her knowledge.

50.4 A general notice that a director is a director of any specified firm or corporation is a sufficient declaration under this clause as regards the director and the transactions. After giving the general notice it is not necessary for the director to give any special notice relating to any particular transaction with that firm or corporation. It is the duty of the secretary to record in the minutes any declaration made or any general notice given by the director in pursuance with this clause.

50.5 Subject to the Act, a director who has a material personal interest in a matter that is being considered at a meeting of directors:

- (a) must not vote on the matter (or in relation to a proposed resolution under subparagraph (b)(ii) of this clause in relation to the matter, whether in relation to that or a different matter; and
- (b) must not be present while the matter (or a proposed resolution of that kind) is being considered at the meeting, unless:
  - (i) the matter applies to an interest that the director has as a member in common with the other members; or
  - (ii) the directors have passed a resolution that specifies the director, the interest and the matter, and states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.

50.6 A director who holds an office or possesses a property whereby duties or interests might be created whether directly or indirectly in conflict with his or her duties or interest as a director must declare at a meeting of the directors the fact, nature, character and extent of the conflict.

50.7 A director may still be present and vote if:

- (a) his or her interest arises because the director is a member of the company and the other members have the same interest;
- (b) the interest relates to an insurance contract that insures, or will insure, the director against liabilities that the director incurs as a director of the company;
- (c) the interest relates to a payment by the company under clause 48;
- (d) the Australian and Securities Commission (ASIC) makes an order allowing the director to vote on the matter; or
- (e) the directors who do not have a material personal interest in the matter pass a resolution that:
  - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the company; and
  - (ii) states that those directors are satisfied that the interest should not prevent the director from voting or being present at the meeting.

## **51. Calling directors' meetings**

51.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.

51.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

## **52. Chairperson for directors' meetings**

52.1 The elected chairperson is entitled to chair directors' meetings.

52.2 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the elected chairperson is:

- (a) not present within thirty (30) minutes after the commencement time set for the meeting; or
- (b) is present but unwilling to act as chairperson of the meeting.

## **53. Quorum at directors' meeting**

53.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than fifty percent (50%) of directors.

53.2 A quorum must be present for the duration of the directors' meeting.

## **54. Using technology to hold directors' meetings**

54.1 The directors may hold meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.

54.2 The directors' agreement may be standing (ongoing).

54.3 A director may only withdraw his or her consent within a reasonable period before the meeting.

## **55. Circular resolutions of directors**

55.1 The directors may pass a circular resolution without a directors' meeting being held.

55.2 A circular resolution is passed if all of the directors entitled to vote in respect to the resolution sign or otherwise agree to the resolution in the manner set out in clause 55.3 or clause 55.4;

55.3 Each director may sign:

- (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
- (b) a separate copy of that document provided that the wording of the resolution is the same in each copy.

55.4 The company may send a circular resolution by email to the directors, and the directors may agree to the resolution by sending a reply email to that effect, which includes the text of the resolution in their reply.

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

- 56.1 A director has a right of access to the financial records of the company at all reasonable times.
- 56.2 The company must give a director access to:
- (a) certain documents, including documents provided for, or available to the directors; and
  - (b) any other documents referred to in those documents.
- 56.3 If the directors agree, the company may give a former director access to:
- (a) certain documents, including documents provided for or available to the directors; and
  - (b) any other documents referred to in those documents.

## Role of secretary

### **57. Appointment and role of secretary**

- 57.1 The company must have at least one (1) secretary who may also be a director.
- 57.2 A secretary must be appointed by the directors (after the appointee has given the company his or her signed consent to act as secretary to the company) and may be removed by the directors.
- 57.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 57.4 The role of the secretary includes:
- (a) maintaining a register of the company's members; and
  - (b) maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions.

## Minutes and records

### **58. Minutes and records**

- 58.1 The company must, within one (1) month, make and keep the following records:
- (a) minutes of proceedings of general meetings;
  - (b) minutes of circular resolutions of members;
  - (c) a copy of a notice of each general meeting; and
  - (d) a copy of a members' statement distributed to members under clause 30.1.
- 58.2 The company must, within one (1) month, make and keep the following records:
- (a) minutes of proceedings of resolutions of directors' meetings (including meetings of any committees); and
  - (b) minutes of circular resolutions of directors.

- 58.3 The directors must ensure that minutes of a general meeting or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting; or
  - (b) the chairperson of the next meeting.
- 58.4 The directors must ensure that minutes of the passing of a circular resolution (of members and directors), are signed by a director within a reasonable time after the resolution is passed.

## Notice

### **59. Notice**

- 59.1 Anything written to or from the company under any clause in this constitution is written notice and is subject to clauses 60 to 62 unless specified otherwise.
- 59.2 Clauses 60 to 62 do not apply to a notice of proxy under clause 36.6.

### **60. Notice to the company**

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

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

### **61. Notice to members**

- 61.1 Written notice or any communication under this constitution may be given by the company to a member:
- (a) in person; or
  - (b) by posting it to, or leaving it at the member's registered address, or (if the member has no registered address within the State) to the address, if any, within the State supplied by the member to the company for service of notices;
  - (c) by sending it to the email or other electronic address (if any) nominated by the Member as an alternative address for service of notices and a notice sent by facsimile or other electronic means is deemed to be given on the business day following the day of transmission; or



- (d) by sending it to the facsimile number nominated by the member as an alternative address for service of notices (if any); or
- (e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).

61.2 If the company does not have an address for the member, the company is not required to give notice in person.

## **62. Notice generally**

62.1 Notice of every general meeting shall be given in any manner hereinbefore authorised to:

- (a) every member except those members who (having no registered address within the State) have not supplied to the company an address within the State for the giving of notices to them; and
- (b) the auditor or auditors for the time being of the company (if any); and
- (c) each director.

62.2 Notice is taken to be given:

- (a) if delivered in person or left at the recipient's address, on the day it is delivered;
- (b) if sent by post, on the third (3<sup>rd</sup>) day after it is posted with the correct payment of postage costs;
- (c) if sent by email, facsimile or other electronic method, on the business day after it is sent; and
- (d) if given under clause 61.1(e), on the business day after the notification is sent informing that the notice is available.

## Financial year

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

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

## Execution of documents

### **64. Execution of documents**

64.1 The Board may provide for the use of a common seal for the purpose of executing documents and for its safe custody. The seal shall only be used by the authority of the Board, or of a committee of the Board authorised by the directors to authorise the use of the seal. Every document to which the seal is affixed shall be signed by a director and countersigned by another director, a secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.

- 64.2 The Company may execute a document without using the seal if the document is signed by:
- (a) two (2) directors; or
  - (b) a director and the secretary.

## Indemnity and insurance

### 65. Indemnity

65.1 Subject to Division 1 of Part 2D.2 and section 212 of the Act, the company indemnifies a person who has been an officer of the company (including a director) out of the assets of the company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the company:

- (a) to another person (other than the company or a related body corporate) unless the liability:
  - (i) is for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
  - (ii) arises out of conduct involving a lack of good faith; and
- (b) for legal costs and expenses incurred by the person but not including the costs and expenses incurred:
  - (i) in defending or resisting proceedings in which the person is found to have a liability for which the person could not be indemnified under section 199A (2) of the Act;
  - (ii) in defending or resisting criminal proceedings in which the person is found guilty;
  - (iii) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
  - (iv) in connection with the proceedings for relief to the person under the Act in which the court denies the relief.

65.2 In this clause, “officer” means a director or secretary and includes a director or secretary who has ceased to hold that office.

65.3 In this clause, “to the relevant extent” means:

- (a) to the extent that the company is not precluded by law (including the Act) from doing so; and
- (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

65.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the company.

### 66. Insurance

Except to the extent precluded by the Act including section 199B, and if the directors consider it appropriate, the company may pay or agree to pay a premium in respect to a contract insuring a person who is or has been an officer of the company or of a related body corporate of the company against any liability:

- (a) incurred by the person as an officer of the company which does not arise out of conduct involving a wilful breach of duty in relation to the company or a contravention of sections 182 or 183 of the Act; or
- (b) for costs and expenses incurred by the person in defending proceedings as an officer, whether civil or criminal and whatever their outcome.

## Winding up

### **67. Surplus assets following dissolution**

- 67.1 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 distributed to some other fund, authority or institution determined by the members on the winding up or dissolution of the company or failing which by a Judge of the Supreme Court of the State and having objects or purposes similar to the purpose of the company and which is a named fund, authority or institution known to have been approved under sub-division 30-A, sub-division 30-B or sub-division 30-BA of the *Income Tax Assessment Act 1997* (Cth) ("Tax Act") or a fund, authority or institution falling under one or more of the items listed in the tables in sub-division 30-B of the Tax Act and if and so far as effect cannot be given to the aforesaid provision then to some not-for-profit or charitable objects.
- 67.2 If the company is wound up any surplus assets must not be distributed to a member or former member of the company unless that member or former member is a not-for-profit or charitable organisation.
- 67.3 Subject to the Act and any other applicable Act, and any court order, any surplus assets that remain after the company is wound up must be distributed to one or more not-for-profit organisations with non-profit purpose(s) similar to or inclusive of the purpose(s) in clause 6 and which also prohibit the distribution of any surplus assets to its members to at least the same extent as the company.
- 67.4 The decision as to the non-profit organisations to be given the surplus assets must be made by special resolution of members at or before the time of winding up. If the members do not make this decision, the company may apply to the Supreme Court to make this decision.

## Deleted (Consent of Members)

**Date: 21<sup>st</sup> October 2022**