



Constitution of

Patscherkofel Lodge (Mt Buller) Ltd

Company limited by guarantee not having a share capital.

**PATSCHERKOFEL LODGE (MT BULLER) LTD • REGISTERED OFFICE: PROACCT PTY LTD • SUITE 1
255 WHITEHORSE ROAD BALWYN VICTORIA 3103 • PO BOX 139 BALWYN VICTORIA 3103**

ABN 53 006 516 874

Interpretation

- 1 1.1 In this Constitution, unless the context otherwise requires:
 - 1.1.1 "**the Association**" means the **Patscherkofel Lodge (Mt Buller) Limited**;
 - 1.1.2 "**Board**" means the Board of the Association established pursuant to clause 43;
 - 1.1.3 "**Director**" means a member of the Board;
 - 1.1.4 "**Executive**" means the Executive Committee of the Board established pursuant to clause 70;
 - 1.1.5 "**the Law**" means the Corporations Law;
 - 1.1.6 "**member**" means a body admitted to membership under this Constitution;
 - 1.1.7 "**Regulations**" means the Regulations made in accordance with clause 57;
 - 1.1.8 "**the seal**" means the common seal of the Association;
 - 1.1.9 "**Secretary**" means any person appointed to perform the duties of the secretary of the Association.
- 1.2 Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to electronic mail or reproduction, printing, braille, taping, recording, lithography, photography and other modes of representing or reproducing words in a visible or sound recording form.
- 1.3 Words or expressions contained in this Constitution shall be interpreted in accordance with the provisions of the Law as in force at the date at which this Constitution become binding on the Association.

Name

- 2 The name of the company is "**Patscherkofel Lodge (Mt Buller) Limited.**"

Objects

- 3 The objects of the Association are:
 - 3.1 To promote the sport of skiing amongst the members of the Association and to encourage snow sports activities in Victoria.
 - 3.2 For the association of persons interested in the encouragement and development of skiing and ski touring.

- 3.3 To own or lease the premises known as Patscherkofel Lodge and to develop and operate the same or other suitable premises as a ski lodge or otherwise for the benefit of the members of the Lodge and in pursuance of its other objects;
- and for the purpose of carrying out these objects, the Association shall have the following powers:
- 3.4 To purchase, take or lease, or in exchange, hire or otherwise acquire, land to the extent permitted by law for any estate or interest.
- 3.5 To erect, construct, make, alter, pull down, repair, improve and maintain houses and buildings, including any existing buildings and to provide the same with light, water, drainage and all other necessities.
- 3.6 To let as residences, offices, shops or otherwise any parts of any land or building and in such divisions and manner as may be expedient, but subject, however, to the provisions of any express trust upon which the same may for the time being be held.
- 3.7 To provide advice on matters that would help further its aims.
- 3.8 To negotiate with governments and other public and private bodies on matters approved by the Association, which will help further its aims.
- 3.9 To establish the status and classes of members of the Association and to regulate the same and to admit to such status and classes such applicants as shall be eligible therefore.
- 3.10 To institute and conduct meetings and discussions.
- 3.11 To consider all questions affecting the interests of the Association and to promote or oppose any legislative or other measures affecting such matters or related to the interests of the Association.
- 3.12 To establish and maintain when necessary, physical facilities as may seem conducive to the objects of the Association.
- 3.13 To acquire in any manner whatsoever any real property or any estate or interest therein whether such real property be freehold, leasehold or held under licence or permissive occupation or any personal property of the Association or any rights, privileges or concessions.
- 3.14 To sell or transfer, sub-let or otherwise dispose of any real or personal property of the Association.
- 3.15 To accept any gift, endowment, legacy or bequest made to the Association generally or made for the purpose of any specific object of the Association, to carry out and perform any trusts attached to any such gift, endowment, legacy or bequest and otherwise carry out and perform any trusts the undertaking whereof may be necessary for or conducive to the carrying out of the objects of the Association

provided that the Association shall only deal with any such gift, endowment, legacy or bequest in such manner as is allowed by law, having regard to such trusts.

- 3.16 To establish and support or aid in the establishment and support of any charitable or benevolent associations, institutions or funds connected with the objects of the Association and conducive to the furtherance of its objects.
- 3.17 To associate with any other institutes, associations or bodies statutory or otherwise the objects or activities of which may be similar to those of the Association (**provided always that** the Association shall not subscribe to nor support with its funds nor amalgamate with any institute, association, society or body which does not prohibit the distribution of its income and assets among its members to an extent at least as great as that imposed on the Association pursuant to the provisions of this Constitution).
- 3.18 To employ and dismiss officers and employees whether professional or otherwise whose employment may be necessary or conducive to the furtherance of the objects of the Association and to pay to such persons any salaries, wages, fees or emoluments as shall be appropriate and to establish, manage, support or make contributions to any fund designed to benefit such persons or their dependents.
- 3.19 In furtherance of the objects of the Association, to borrow or raise and to secure the payment of money upon such terms and in such manner as the Association shall see fit, and in particular by the granting of mortgages or by unsecured obligations or by the issue of debenture stock perpetual or otherwise charged upon all or any of the assets and undertakings, both present and future, of the Association.
- 3.20 To make, rescind or alter from time to time Regulations not being inconsistent with any applicable law or with this Constitution for the time being in force for the regulation of the affairs of the Association.
- 3.21 To invest and deal with the funds of the Association not immediately required for any of its objects in such manners as may be determined from time to time.
- 3.22 To establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit past members, past officers, employees or past employees or the dependants or connections of any such persons, and to grant pensions and allowances, and to make payments towards insurance, and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition, or for any public, general or useful object.

- 3.23 To do all such other things as are incidental or conducive to the furtherance of the objects of the Association.

Powers

- 4 The Association has power, solely for the purpose of carrying out the above mentioned objects and not otherwise, to do all such other things as are incidental or conducive to the attainment of those objects and, for such purpose, to exercise, subject to the Law, the rights, powers and privileges conferred on the Association under the provisions of the Law.

Liability

- 5 The liability of the members of the Association is limited.
- 6 Every member of the Association undertakes to contribute to the property of the Association in the event of the same being wound up whilst a member, or within one (1) year after the member ceases to be a member, for payment of the debts and liabilities of the Association contracted before ceasing to be a member and to the costs, charges and expenses of winding up and for the adjustment of the rights of the contributors amongst themselves, such amount as may be required, not exceeding twenty dollars (\$20.00).

Dissolution

- 7 If upon the winding-up or dissolution of the Association there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed amongst the members of the Association, but shall be given or transferred to some other institution or institutions promoting similar interests situate within the Commonwealth of Australia, and which is required by its constitution to apply its profits or income in promoting its objects and is prohibited from paying any dividends to its members to the same extent as the Association, having objects similar to the objects of the Association to be determined by the Board prior to the dissolution of the Association, or in default thereof by application to an appropriate Court for determination **provided that** any property comprising funds derived from donations to the Association which are tax deductible pursuant to the Income Tax Assessment Act shall only be given or transferred to an institution or institutions similarly qualifying under the provisions of that Act.

Membership

8 There shall be classes of membership as follows:-

- 8.1 Full Members;
- 8.2 Dual Members;
- 8.3 Honorary Life Members;
- 8.4 Junior Members;

and such other categories or classes as may be determined in the Regulations pursuant to clause 14.1.

- 9 9.1 Full Members and Dual Members shall be entitled to attend and vote at all general meetings of the Association.
- 9.2 Only natural persons shall be eligible for membership of the Association.

Full Members

- 10 "**Full Member**" shall be any person who has been duly accepted by the Board as such and have paid the applicable membership fee **provided that** such persons have paid to the Association the current annual subscription, and hold, whether by transfer or otherwise, a debenture issued by the Association.

Dual Members

- 11 "**Dual Member**" shall be any person who has been duly accepted by the Board as such and have paid the applicable membership fee and **provided that** such persons have paid to the Association the current annual subscription, and hold, whether by transfer or otherwise, a debenture issued by the Association. Dual Membership may be granted by the Board only in conjunction with Full Membership, and only one Dual Membership shall be granted for each Full Membership. Dual Members shall have the same voting rights as two (2) Full Members.

Honorary Life Members

- 12 "**Honorary Life Members**" shall be any person who has given distinguished and conspicuous service to the Association who may, on the nomination of the Board and on a majority vote of Members at an Annual General Meeting, be invited to become an Honorary Life Member of the Association. Such member, on accepting Honorary Life Membership, shall not be entitled to vote at general meetings of the Association, or constitute a quorum, but may attend and speak. Honorary Life Members shall not, after appointment, be liable to pay any further membership fees or subscriptions.

Junior Members

- 13 "Junior Member" shall be any person who has been duly accepted by the Board as such, has paid the applicable fee and is between the ages of four (4) and eighteen (18) at the time of admission. Junior Members must hold a debenture issued by the Association. Junior Members may attend and speak at general meetings of the Association, but shall not, until they attain the age of eighteen (18) years, be entitled to vote or constitute a quorum.

Rights of and Admission to Membership

- 14 14.1 Save as set out in this Constitution, the rights and benefits, duties and obligations and status of members within the various classes of membership and categories of membership (if any) within those classes which may exist from time to time shall be defined by the Regulations.
- 14.2 Any person:
- 14.2.1 who is eligible, in accordance with the provisions of this Constitution or the Regulations, to become a member in respect of a particular class of membership, or of a particular category within that class; and
 - 14.2.2 who makes written application for such membership in accordance with the provisions of this Constitution; and
 - 14.2.3 whose application for such membership is accepted by the Board; and
 - 14.2.4 who, at the time of making application for membership (or within such period (if any) thereafter as the Board may in its absolute discretion allow) pays in full such entrance fee (if any) and such subscriptions (if any) as may from time to time be fixed by the Board in respect of that class or category;
- shall, upon receipt of such payment (if any) by the Association become a member of the Association in respect of that class or category within that class (as the case may be).

Form of Application

- 15 Every applicant for membership of the Association shall sign an application for membership in such form as the Board may from time to time prescribe (whether by Regulation or otherwise) whereby the applicant applies for and agrees to become a member of the Association in respect of a particular class of membership, and agrees to be bound by and to observe the provisions of this Constitution.

Board Approval of Applicants

- 16 16.1 Every application for membership shall be considered by the Board (or a committee or officers appointed for such purpose) which shall decide whether or not the application for membership is to be accepted. The decision of the Board (or such committee or officers) on an application for membership and as to the class, and category (if any), of membership for which the applicant is eligible shall be final and conclusive and binding on the applicant. The Board (or such committee or officers) shall not be required to give any reason for the rejection of any application for membership.
- 16.2 The Board shall not unreasonably reject any application for membership of any solvent eligible person of good standing and who holds, or has a right to hold, a debenture issued by the Association.
- 16.3 Any Applicant whose application for membership is rejected by the Board shall be notified in writing by the Board.

Booking Priority

- 16A The Board shall determine the order of booking priority on an annual basis and publish this information to members.

Failure to Pay Entrance Fee and/or Subscription

- 17 If an applicant whose application for membership has been accepted by the Board fails to pay the entrance fee (if any) and initial annual or once only subscription (if any) payable in respect of that application, at the time of making the application or within such period (if any) thereafter as the Board may in its absolute discretion allow, the Association's acceptance of the application shall lapse.

Entrance Fees and Subscriptions

- 18 18.1 The Board may, subject to members' approval at a general meeting of the Association:
- 18.1.1 set, from time to time, a membership fee for the categories of members payable by persons applying for membership of the Association; and
- 18.1.2 apply levies, for any purpose approved by the Board, payable by members or certain classes of members.
- 18.2 The membership fee shall be paid by all membership applicants on joining, except as herein provided:-

- 18.2.1 any transferee of a membership transfer that is between direct members of a family (parent, child (including step children), grandchild, husband, wife, spouse (including de facto spouse), brother or sister) is exempted, subject to the payment of any administration fee imposed by the Board for such purpose; and
- 18.2.2 in extraordinary circumstances the Board may exempt a transferee of a membership transfer, or such conditions (including any fee) as the Board determines.
- 18.3 No member shall, by reason of his or her membership, have any transmissible or assignable interest by operation of law or otherwise in any of the assets of the Association. Any member expelled in accordance with this Constitution, or otherwise ceasing to be a member, shall forfeit all such rights or claim upon the Association or its property or funds, as he or she otherwise would have by reason of membership **provided that** the executors or administrators of a deceased member may transfer the deceased member's membership and debenture to a person approved by the Board, in accordance with the provisions of clause 19.
- 18.4 The Board may, subject to members' approval at a general meeting of the Association, fix an annual subscription. subject to any Regulations, the subscription shall be payable by all members in respect of each membership held by them.
- 18.5 The annual subscription shall become due on the date set by the Board, and the subscription shall be payable before that date. The Board may impose such pecuniary penalty as it shall determine upon members who fail to pay the annual subscription by the due date.
- 18.6 A member whose annual subscription remains unpaid after the due date shall not be entitled to use the facilities of the Association or to vote at any meeting of the Association while such subscription and any penalty imposed by the Board pursuant to this clause remains unpaid.
- 18.7 The Board may cancel the membership of any member who:-
 - 18.7.1 has failed to pay his or her annual subscription for a period of two (2) consecutive years; and
 - 18.7.2 being required to do so under this Constitution, ceases to hold a debenture issued by the Association.
- 18.8 The entrance fee (if any) and subscriptions (if any) payable by an applicant for membership shall be payable in full at the time of making the application or within such period (if any) thereafter as the Board may generally or in any particular case allow.

Debentures

- 19 19.1 Subject to the Law, the Board shall issue debentures to members on such terms and conditions as it thinks fit. Debentures shall not be redeemable and shall not carry interest.
- 19.2 Debentures shall not be transferred otherwise than in accordance with the following provisions:-
- 19.2.1 Every member who desires to transfer his or her debenture ("**the Vendor**"), shall give to the Association notice in writing ("**Transfer Notice**") of such desire. Subject to this clause, a Transfer Notice shall constitute the Board the Vendor's agents for the sale of the said debenture in accordance with this clause. Upon receipt of the Transfer Notice, the Board shall offer the debenture to such persons, and in such priority of them as the Board may determine, at a price to be agreed upon between the parties. Upon any such person or persons (and, if more than one, successively in the priority determined by the Board), giving notice to the Board within twenty-one (21) days that he or she wishes to enter into negotiations to purchase the debenture ("**the Purchaser**"), the Board shall forthwith give notice to the Vendor, who shall thereupon negotiate with the Purchaser for the sale of the debenture. If the Vendor fails to conclude negotiations for the sale of the debenture to any such person within fourteen (14) days, then the Board shall successively offer the debenture for sale to the other persons aforesaid. Upon the Vendor and a Purchaser agreeing on the price and terms of the sale of the debenture, the Vendor shall thereupon transfer the debenture to the Purchaser and given notice of such transfer to the Board, together with an application of the Purchaser for membership of the Association as a Full Member or Dual Member, as appropriate.
- 19.2.2 If, in any case, the Vendor refuses or neglects to transfer the debenture, such person as the Board may appoint shall forthwith be deemed to be the duly appointed attorney of the Vendor, with full power to execute, complete and deliver in the name of the Vendor a transfer of the debenture to the Purchaser, and the Association may receive and give a good discharge for the purchase money on behalf of the Vendor.
- 19.2.3 If no person determined by the Board shall agree to purchase the debenture from the Vendor, then the Vendor shall be at liberty to transfer the debenture to any person whom the Vendor nominates for membership of the

Association provided such person's application for membership has been first approved by the Board in accordance with this Constitution.

- 19.2.4 Notwithstanding anything contained in this clause, the Vendor shall, on no occasion, offer the debenture to any person on terms and at a price more favourable than those offered by the Vendor to the persons determined by the Board aforesaid.
- 19.2.5 The restrictions on transfer contained in this clause shall not apply to any transfer by a member to the spouse, child or remoter issue of that member **provided that** such transferee has been nominated for and admitted to membership in accordance with this Constitution.
- 19.2.6 A member who resigns his or her membership, dies or is made bankrupt, or otherwise ceases to be a member, shall be deemed to have given a Transfer Notice to the Board for the purposes of this clause, and the provisions of this clause shall apply in relation to the transfer and sale of that member's debenture (if any). Notwithstanding anything else contained in this Constitution, such member shall remain liable to pay to the Association all fees, subscriptions, or levies payable under this Constitution up to and until such member shall have transferred his or her debenture pursuant to this clause.

Cessation

20 A member shall cease to be a member:-

- 20.1 if the member, by notice in writing to the Association resigns;
- 20.2 pursuant to clause 21; or
- 20.3 if the member is expelled pursuant to clause 22;

but shall continue to be liable for any subscriptions and other moneys due and unpaid at the time of cessation of membership and also for any moneys payable by the member pursuant to this Constitution.

Insolvency

21 If any member is adjudicated bankrupt, or shall make a composition, or enter into a scheme or arrangement under the bankruptcy laws, he or she shall thereupon cease to be a member of the Association, but the Board may in exceptional cases reinstate him or her.

Cessation and Expulsion of Member

- 22 22.1 If any member :
- 22.1.1 wilfully refuses or neglects to comply with the provisions of this Constitution or the Regulations; or
- 22.1.2 is guilty of any conduct which in the opinion of the Board is prejudicial to the interests of the Association;
- the Board shall have power, in its absolute discretion, by a vote of two-thirds of directors, present and voting, to caution, suspend request the member to explain or expel the member from the Association and the Board's decision shall be final and conclusive and binding on the member and shall not be subject to any challenge whatsoever. Notice of the Board's decision shall be given in writing to the member concerned.
- 22.2 At least one (1) week before the meeting of the Board at which such resolution is passed, the member shall have had notice of such meeting and of what is alleged against him or her and of the intended resolution and that he or she 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 or she may think fit.

General Meetings

- 23 An Annual General Meeting of the Association shall be held in accordance with the provisions of the Law. All general meetings, other than the Annual General Meetings, shall be called Extraordinary General Meetings.
- 24 If required by the Board, or upon the requisition in writing by four (4) directors, or of not less than five percent (5%) of the members of the Association, the Secretary shall convene an Extraordinary General Meeting. The occasion for calling the meeting shall be stated in the requisition and no business shall be transacted at the meeting excepting that for which it has been summoned and the confirmation of the minutes of any previous general meeting.
- 25 Subject to the provisions of the Law relating to special resolutions and agreements for shorter notice, twenty-one (21) days' notice at least of all Annual General Meetings and of all Extraordinary General Meetings (in both cases exclusive of the day on which the notice is served or deemed to be served, and exclusive of the date 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 shall be given to such persons as are entitled to receive such notices from the Association.

- 26 For the purpose of clause 25, all business shall be special that is transacted at an Extraordinary General Meeting, and also all that is transacted at an Annual General Meeting, with the exception of the election of directors, the consideration of the accounts, balance-sheets, and the report of the Board and auditor.
- 27 The Annual General Meeting shall be held, on such day in each year as shall be fixed annually by the Board, for the following purposes:
- 27.1 to receive the report by the Board on the affairs of the Association;
 - 27.2 to receive the financial reports of the Association and audited statements of accounts for the financial year preceding;
 - 27.3 to appoint the auditors of the Association;
 - 27.4 to elect directors;
 - 27.5 to transact any other business approved by the Board.
- 28 No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, twenty (20) members present in person shall be a quorum. For the purpose of this clause, "**member**" includes a person attending as an attorney or proxy of a member.
- 29 A proxy or attorney shall be a member of the Association.
- 30 If within an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Board may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.
- 31 The Chairman of the Association shall preside as chairperson at every general meeting of the Association, or if there is no Chairman, or if the Chairman is not present within fifteen (15) minutes after the time appointed for the commencement of the meeting or is unwilling to act, then the members present shall elect one (1) of their number to be chairperson of the meeting.
- 32 The chairperson 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. 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. Save as above provided it shall not be necessary to give notice of an adjournment or the business to be transacted at an adjourned meeting.

- 33 A minute book shall be kept in which shall be recorded minutes of all general meetings. The minutes, if purporting to be signed by the chairperson of the meeting at which the proceedings were held, or by the chairperson of the next succeeding meeting, shall be evidence of the proceedings and such meeting shall be deemed to have been duly convened and held, and the resolutions recorded in the minutes duly passed or otherwise as recorded.
- 34 The chairperson shall confirm the minutes of the Annual General Meeting or any Extraordinary General Meeting at a meeting of the Board subsequent to that meeting, no discussion being permitted thereon except as to their accuracy.
- 35 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 -
- 35.1 by the chairperson; or
- 35.2 by at least five (5) members present in person or by proxy.
- Unless a poll is so demanded, a declaration by the chairperson 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 Association shall be conclusive evidence of the fact without proof of the number or is proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.
- 36 If a poll is duly demanded, it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairperson directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chairperson or on a question of adjournment shall be taken immediately.
- 37 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson 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.
- 38 A member may vote in person or by proxy or by attorney and on a show of hands every person present who is a member shall have one (1) vote, and on a poll every member present in person or by proxy or by attorney shall have one (1) vote.
- 39 The instrument appointing a proxy shall be in writing under the hand of the appointor or of its attorney duly authorised in writing. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A member shall be entitled to instruct its proxy to vote in favour of or against any proposed resolutions. Unless otherwise instructed, the proxy may vote as he or she thinks fit.

- 40 The instrument appointing a proxy may be in a common or usual form, or such other form approved by the Board from time to time.
- 41 The instrument appointing a proxy and the power of attorney or other authority, of 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 Association 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.
- 42 A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, if no intimation in writing of the death, unsoundness of mind or revocation has been received by the Association at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

The Board

- 43 43.1 The Board shall be comprised of at least four (4), but not more than nine (9), Full Members elected annually by the general body of members in general meeting as provided in this Constitution.
- 43.2 The Board may appoint other members of the Association to assist the Board in the management of the Association and, subject to the terms of such appointment, to attend and advise at meetings of the Board. Such appointees shall not have a vote at meetings of the Board.
- 44 The members of the Board shall be elected by ballot at the Annual General Meeting. Nominations of candidates for election to the Board must be received at the registered office of the Association at least forty-eight (48) hours before the Annual General meeting. Candidates must be members of the Association and must be proposed and seconded in writing by members, who must sign the nomination form of the candidate. Each nomination form must be signed by the member nominated. At the Annual General Meeting, on each ballot, each member present and each proxy holder shall be entitled to vote in respect of each vote which each member or proxy holder is entitled to exercise. The ballot shall be counted by scrutineers appointed for the purpose by resolution of the Annual General Meeting, and the required number of candidates receiving the highest number of votes shall be declared elected to hold office until the next Annual General Meeting, subject to removal by a resolution of an Extraordinary General Meeting of the Association, and the provisions of the Law.

- 45 Subject to the provisions contained in this Constitution, the Association may from time to time in general meeting increase or reduce the number of Directors.
- 46 The Board shall, at its first meeting after each Annual General Meeting, elect from amongst the directors a Chairman, a Secretary, and a Treasurer as members of the Executive ("**the office-bearers**").
- 47 In the event of a casual vacancy for the positions of a member of the Board or an office-bearer, the Board may appoint to the vacant office some person qualified to hold it and the person so appointed may continue in office up to and including the day of the Annual General Meeting next following that person's appointment, and, if eligible, may be re-elected at that meeting.
- 48 Time in office following appointment to fill a casual vacancy in those offices shall not be counted for the purposes of time limits set out in this Constitution.
- 49 The office of a director or office-bearer shall become vacant if that director or office-bearer:
- 49.1 becomes bankrupt or makes any arrangement or composition with his or her creditors generally; or
 - 49.2 becomes prohibited from being a director of a company by reason of any order made under the Law; or
 - 49.3 ceases to be a director by operation of any provision of the Law; or
 - 49.4 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; or
 - 49.5 resigns office by notice in writing to the Association; or
 - 49.6 for more than three (3) meetings of the Board is absent without permission of the Board.
- 50 Any director who has a financial interest in any contract or arrangement made or proposed to be made with the Association shall disclose the director's interest at the first meeting of the Board at which the contract or arrangement is first taken into consideration if their interest then exists, or, in any other case, at the first meeting of the Board after the acquisition of their interest. If a director becomes interested in a contract or arrangement after it is made or entered into, the member shall disclose such interest at the first meeting of the Board after the director becomes so interested.
- 51 No director shall vote as a director in respect of any contract or arrangement in which the director is so interested and, if the director does vote, such vote shall not be counted.

Powers and Duties of the Board

- 52 The business of the Association shall be managed by the Board who may exercise all such powers of the Association as are not, by the Law or by this Constitution, required to be exercised by the Association in general meeting, subject, nevertheless, to this Constitution, to the provisions of the Law, and to the Regulations. No resolution or regulation made by the Association in general meeting shall invalidate any prior act of the Board which would have been valid if that resolution or regulation had not been passed or made.
- 53 The Board may exercise all the powers of the Association to borrow money and to mortgage or charge its property, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt, liability, or obligation of the Association.
- 54 The Board shall invest the funds of the Association not immediately required for the purposes of the Association in any one or more of the modes of investment from time to time authorised by law for the investment of trust funds.
- 55 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Association shall be signed, drawn, accepted, endorsed or otherwise executed by at least two (2) signatories as the Board from time to time determines.
- 56 The Board shall cause minutes to be made:-
- 56.1 of all appointments of officers;
 - 56.2 of names of directors present at all meetings of the Board; and
 - 56.3 of all proceedings at all meetings of the Board.

The 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.

Power to Make Regulations

- 57 57.1 Subject to the provisions of this clause, the Board shall have power from time to time to make, amend and repeal all such Regulations as it deems necessary or desirable for the proper conduct and management of the Association, the regulation of its affairs, and the furtherance of its objectives.
- 57.2 Without in any way limiting the power of the Board under clause 57.1, the Board may make, amend and repeal Regulations which:-
- 57.2.1 define the rights and benefits, duties, obligations and status of members within the various classes of membership of the Association, and of the various categories of membership (if any) within those classes of membership which may exist from time to time;

- 57.2.2 regulate all matters relating to applications for, and admission to, membership of the Association not otherwise provided for in this Constitution;
 - 57.2.3 define and regulate the procedure and order of business of general meetings of the Association and meetings of the Board, to the extent to which this is not provided for in this Constitution;
 - 57.2.4 define and regulate the functions, duties and responsibilities of any officer of the Association to the extent to which they are not provided for in this Constitution.
- 57.3 No Regulation shall be inconsistent with, nor shall it affect a repeal or modification of anything contained in this Constitution.
- 57.4 Any Regulation made by the Board may be set aside by a special resolution of a general meeting of the Association.
- 57.5 Save as provided in this Constitution, all Regulations so long as they remain in force shall be binding upon all members of the Association. A book containing the Regulations shall be kept in such place as the Board shall appoint for that purpose.

Proceedings of the Board

- 58 The Board shall meet at such place and at such time as the Board may from time to time determine **provided that** at least seven (7) days' notice of any meeting of the Board is given to each director.
- 59 Meetings of the Board may be convened by the Chairman, the Secretary, or by any two (2) directors.
- 60 Written notice of each meeting of the Board shall be served on each director by delivering it to the director before the meeting or by sending it by post in a pre-paid letter addressed to the director at his or her usual or last known place of abode in time to reach him or her prior to the meeting being held, or by facsimile, to the last known facsimile number of the director, or by electronic mail, to the last known electronic mail address supplied by the director for this purpose.
- 61 One-half of the number of directors in office, plus one (1), shall form a quorum at any meeting of the Board. No business shall be transacted unless a quorum is present and if within half an hour of the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned.
- 62 The Chairman or, in the Chairman's absence, the Secretary, shall preside at meetings of the Board, but if neither of these office-bearers is present, the directors present shall choose one (1) of their number to be chairperson.

- 63 The Board may at any time appoint not more than two (2) persons as additional directors who shall hold office until the next Annual General Meeting.
- 64 64.1 All questions arising at any meeting of the Board shall be decided by a show of hands or, if demanded by any director, by a division.
- 64.2 Each director shall have one (1) vote. Unless otherwise provided in this Constitution, all decisions of the Board shall require an affirmative vote of a majority of the directors present and voting at the relevant meeting. In the event of an equality of votes, the chairperson shall have a casting vote.
- 65 For the purposes of this Constitution, the contemporaneous linking together by telephone video conference, or other electronic means, of a number of the directors, not less than a quorum, shall be deemed to constitute a meeting of the Board and all the provisions thereof as to meetings of the Board shall apply to such meetings by telephone so long as the following conditions are met:
- 65.1 all the directors for the time being entitled to receive notice of a meeting of the Board shall be entitled to notice of a meeting by telephone or other means and to be linked by telephone for the purposes of such meeting;
- 65.2 notice of any such meeting may be given by telephone or other means;
- 65.3 each of the directors taking part in the meeting by telephone must be able to hear or communicate with each of the other directors taking part in the meeting; and
- 65.4 at the commencement of the meeting, each director must acknowledge his or her presence for the purpose of a meeting of the Board to all the other directors taking part.
- 66 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 number of directors may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the Association, but for no other purpose.
- 67 All acts done by any meeting of the Board or of a committee, or by any person acting as a director or member of a committee shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any director or person acting as aforesaid, or that the directors or member of a committee, 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, or such member of a committee.

- 68 A resolution in writing signed by all the directors in Australia for the time being entitled to receive notice of a meeting of the Board, shall be as valid and effectual as if it has 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 (1) or more directors.

Committees

- 69 69.1 The Board may establish committees for specific purposes with such powers and functions as the Board may determine. Such committees may not, without prior approval of the Board, delegate any of the powers and functions of the Committee. Any committee so formed shall conform to any Regulation that may be imposed by the Board and subject thereto shall have power to co-opt any person and all members of such committees shall have one (1) vote.
- 69.2 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and, in the case of an equality of votes, the chairperson shall have a second or casting vote.
- 69.3 The Chairman or the Chairman's nominee shall be an ex-officio member of each committee.

Executive

- 70 70.1 The Executive shall comprise:-
- 70.1.1 the Chairman;
 - 70.1.2 the Secretary; and
 - 70.1.3 the Treasurer.
- 71 Subject to this Constitution, the Regulations and any resolution of the Board to the contrary, the Executive shall exercise all of the powers of the Board (other than the power to make Regulations) between meetings of the Board.
- 72 The provisions of clauses 58 to 68 in respect of proceedings of the Board shall apply on the same basis and to the same extent to proceedings of the Executive as if, unless the context otherwise requires, a reference to the Board therein were a reference to the Executive.
- 73 The Executive shall meet regularly, as it may determine and:
- 73.1 make such recommendations to the Board as it deems necessary regarding the finances and administration of the Association;
 - 73.2 regularly review statements of expenditure, consider reports prepared by the chief executive officer of the Association, examine operating and capital expenditure budgets, and make to the Board such recommendations thereon as it considers necessary;

- 73.3 recommend, for endorsement by the Board, appropriate principles of corporate governance for the Association;
- 73.4 monitor, and regularly report to the Board in relation to, declarations of interest by members of the Board;
- 73.5 perform such other duties as may be delegated or allocated by the Board.

Secretary

- 74 The Secretary shall, in accordance with the Law, be appointed by the Board for such term and upon such conditions as it thinks fit, and any secretary so appointed may be removed by it, subject to all requirements at law.

Postal Ballots

- 75 75.1 Subject to the provisions of the Law and this Constitution, whenever the Board thinks fit, it may submit any question or resolution to the vote of all members entitled to a vote at a general meeting of the Association by means of a postal ballot ("**a Postal Ballot**") in such form and returnable in such manner as the Board decides. A resolution approved by a majority or specific majority of the members voting by such Postal Ballot shall have the same force and effect as such a resolution would have if carried by such a majority or specific majority at a duly constituted general meeting of the Association competent to pass such a resolution.
- 75.2 At least twenty-one (21) days prior to the closing date of a Postal Ballot, the Secretary shall send to all voting members ballot papers, giving particulars of the business in relation to which the Postal Ballot is conducted, an explanation of the method of voting, and a voting form (all in a form and with such content as the Board may approve), and shall give all voting members notice of the closing date of the Postal Ballot.
- 75.3 The Secretary shall receive all voting forms received from voting members in respect of a Postal Ballot and shall promptly advise the Board of the result of the Postal Ballot. Any voting form received after 5:00pm on the closing date of a Postal Ballot, shall be deemed to be invalid and shall not be counted.
- 75.4 In the event of an equal number of votes in respect of any business for which a Postal Ballot is conducted, the Chairman shall have a second and casting vote.
- 75.5 In all other respects, subject to this Constitution, the Board shall determine any other procedures or matters in relation to the conduct

of any Postal Ballot and shall have power to make Regulations for that purpose.

- 75.6 In the event of any dispute by any member in relation to the validity or conduct of any Postal Ballot, such member shall within thirty (30) days of the closing date of such Postal Ballot, give notice in writing to the Board stating the grounds of his or her complaint. The Board may thereupon, either itself investigate the complaint, or may appoint a committee for the purpose. After hearing the complaint, the Board shall determine the matter and its decision thereon shall be absolutely final.

Finance and Accounts

- 76 76.1 The Board shall cause proper accounting and other records to be kept and in accordance with the requirements of the Law, and all other relevant legislation.
- 76.2 The Board shall cause to be made out and laid before each Annual General Meeting a balance-sheet and profit and loss account in accordance with the requirements of the Law.
- 77 The Board shall determine to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Association or any of them will be open to the inspection of members (other than directors) and a member other than a director does not have the right to inspect any document of the Association except as provided by law or authorised by the Board or by the Association in general meeting.
- 78 True accounts shall be kept of the sums of money received and expended by the Association and the manner in respect of which such receipt and expenditure takes place, and of the property, assets and liabilities of the Association and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the Constitution for the time being in force shall be open to the inspection by the members. Once at least in every calendar year, the accounts of the Association shall be examined by one or more properly qualified auditor or auditors who shall report to the members in accordance with the provisions of the Law.

Allocation of Funds Received

- 79 All gifts received for a specific purpose or otherwise subject to conditions attached, shall be paid to the credit of a "**Specific Purpose Fund**" and may be invested from time to time in investments authorised by the Law for the investment of trust funds, or upon deposit with a bank. Any income arising from such investments shall be paid to the credit of the Specific Purpose Fund for which the moneys were originally received. The Board may at any time authorise the disposal of the whole or any part of the Specific Purpose Fund investments for application to the specific purpose for which they were received.
- 80 The income and property of the Association howsoever derived, shall be applied solely towards the promotion of the objects of the Association as set out in this Constitution, and no portion thereof shall be paid or transferred, directly or indirectly by way of dividend or bonus to the members or directors of the Association **provided that** nothing herein contained shall prevent the payment of moneys to members or directors for:
- 80.1 out-of-pocket expenses incurred by a member ("**a director**") of the Board of the Association ("**the Board**") in the performance of any of his or her duties as a member of the Board, where the amount payable does not exceed any amount previously approved by the Board;
 - 80.2 services rendered to the Association by a director in a professional or technical capacity, other than in the capacity as a director, where the provision of such service has the prior approval of the Board, and where the amount payable is approved by the Board and is not more than an amount which would be a commercially reasonable payment for such service or for any salary or wages due to a director as an employee of the Association where the terms of employment have been approved by the Board;
 - 80.3 bona fide remuneration of such amount approved by the Board, to any employee of the Association (other than as a director) in return for services actually rendered;
 - 80.4 goods supplied in the ordinary course and usual way of business to the Association;
 - 80.5 interest at a rate not exceeding the rate for the time being fixed for the purpose of this provision by the Board from time to time on money borrowed from any member or director; or
 - 80.6 reasonable and proper rent for premises demised if let by any member or director.

Audit

- 81 A properly qualified auditor or auditors shall be appointed and the auditor's duties regulated in accordance with the Law.

Seal

- 82 The Board shall provide for the safe custody of the seal which shall only be used by the authority of the Board or of a committee of members of the Board or such other persons as are authorised by the Board in that capacity. Every document to which the seal is affixed shall be signed by a member of the Board and be countersigned by another member of the Board or the Secretary, or such other persons as are authorised by the Board.

Notices

- 83 Any notice required by law or by or under this Constitution to be given to any member shall be given by sending it by pre-paid post to the member at its registered address. 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 on the second (2nd) day after the date of its posting.
- 84 84.1 Notice of every general meeting shall be given in any manner hereinbefore authorised by this Constitution to -
- 84.1.1 every member, except those members who (having no registered address within Australia) have not supplied to the Association an address within Australia for the giving of notices to them; and
 - 84.1.2 the auditor or auditors for the time being of the Association.
- 84.2 No other person shall be entitled to receive notices of general meetings, unless required by the Board.

Officers - Indemnity and Insurance

- 85 To the relevant extent and subject to clause 86:
- 85.1 the Association shall indemnify every person who is or has been an Officer against any liability 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

- 85.2 the Association shall indemnify every person who is or has been an Officer against any liability incurred by the person, as an Officer, to another person (other than the Association or a related body corporate of the Association) unless the liability arises out of conduct involving a lack of good faith.
- 85.3 Without limiting the effect of the foregoing, the Association may execute and deliver any deed, agreement or other document in favour of any Officer or former Officer to whom this clause applies confirming the indemnities contained in this clause in relation to that person. (The foregoing provisions of this clause shall apply whether or not any such deed, agreement or other document is given).
- 85.4 To the extent permitted by law, the Association may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer against a liability:
- 85.4.1 incurred by the person in his or her capacity as an Officer or in the course of acting in connection with the affairs of the Association or a subsidiary of the Association, or otherwise arising out of the Officer's holding such office **provided that** the liability does not arise out of conduct involving a wilful breach of duty in relation to the Association or a subsidiary of the Association or a contravention of the Law; and
- 85.4.2 for costs and expenses incurred by that person in defending Proceedings, whatever their outcome;
- 85.4.3 no indemnity is given by the Association pursuant to this clause to any person who is or has been engaged in the full time employment of the Association against any liability incurred by that person in his or her capacity as a full time employee of the Association in any case where the Board determines that such indemnity should not be given.
- 86 86.1 "**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 such an Officer or in the course of acting in connection with the affairs of the Association, or otherwise arising out of the Officer's holding such office (including proceedings alleging that he or she was guilty of negligence, default, breach of trust or breach of duty in relation to the Association or a subsidiary of the Association).
- 86.2 "**Officer**" means:
- 86.2.1 a director, secretary or executive officer of the Association;
- 86.2.2 a director, secretary or executive officer of any wholly-owned subsidiary of the Association; or

- 86.2.3 a person appointed a trustee by, or acting as a trustee at the express request of, the Association or a wholly-owned subsidiary of the Association.
- 86.3 "**Liability**" includes costs, charges, losses, damages, expenses and penalties.
- 86.4 "**To the relevant extent**" means:
 - 86.4.1 to the extent the Association is not precluded by law from doing so;
 - 86.4.2 where the liability is incurred in the conduct of the business of another corporation or in the discharge of the duties of the Officer in relation to another corporation, to the extent and for the amount that the Officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation; and
 - 86.4.3 to the extent and for the amount that the Officer is not otherwise entitled to be indemnified and is not otherwise actually indemnified.

Use of an Address

- 87 No member shall use or allow to be used the name of the Association in any advertisement, prospectus or business announcement.
- 88 The name or address of the Association shall not be given by a member as his or her address, or otherwise for the purpose of identification in connection with legal proceedings.

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Constitution of

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