

**CONSTITUTION**

**of**

**AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION  
LIMITED**

**ABN 31 008 613 876**

**(AGM – November 2008)**

**(Including amendments passed at AGM  
19 November 2008)**

**CONSTITUTION**  
**of**  
**AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION LIMITED**  
**ABN 31 008 613 876**

**1 PRELIMINARY**

**Company limited by guarantee**

1.1 The Company is limited by guarantee and the liability of members is limited as provided in this Constitution.

**Objects of the Company**

1.2 The objects of the Company are:

- (a) to establish and maintain a national secretariat to awaken, stimulate, encourage and maintain the interest of members of the public in and to promote public knowledge of local government;
- (b) to strengthen the activities and responsibilities of local government;
- (c) to watch over and protect the interests, rights and privileges of local government;
- (d) to take action in relation to any subject or legislation affecting local government bodies nationally;
- (e) to promote the efficient carrying out of local government throughout Australia.

**Application of income and property**

1.3 Subject to rules 1.4 and 10.1, the Company must only spend income in promoting the objects of the Company as stated in rule 1.2. No part of the Company's income may be paid or transferred directly or indirectly by way of dividend bonus or otherwise to Members.

**Certain payments allowed**

1.4 Rule 1.3 does not prevent the payment of reasonable remuneration to any officer or employee of the Company or to any Member or other person in return for services rendered to the Company. In addition, rule 1.3 does not prevent the Company paying to a Member:

- (a) interest on money lent by the Member at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;

(b) reasonable remuneration for goods supplied by the Member in the ordinary course of business; and

(c) reasonable rent for premises leased or licensed by the Member to the Company.

### **Replaceable rules**

1.5 This Constitution replaces the replaceable rules in the Act to the extent of any inconsistency.

### **Definitions**

1.6 The following definitions apply in this Constitution:

“**ABS**” means the Australian Bureau of Statistics.

“**ASIC**” the Australian Securities and Investments Commission.

“**Act**” means the *Corporations Act 2001* (Cth).

“**the ACT**” means the Australian Capital Territory.

“**an ACT Minister**” means a minister of the Crown for the ACT.

“**ACT Government**” means the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988*.

“**agreement**” includes an undertaking or other binding arrangement or understanding, whether or not in writing.

“**Appointor**” means the Director who appoints a particular Alternate.

“**associate**” includes without limitation:

- (a) the Director’s spouse or de-facto partner;
- (b) a former spouse or de-facto partner of the Director;
- (c) a child of the Director (including an adopted child or step-child);
- (d) the parents, grandparents and siblings of the Director; and
- (e) the parents, grandparents and siblings of the Director’s spouse or de-facto partner.

“**business day**” means a day that is not a Saturday, a Sunday or a public holiday.

“**Board**” means the Directors acting collectively under this Constitution.

“**Board meeting**” means a meeting of the Directors pursuant to rule 10.

“**chair**” means the person who presides over a Board meeting or a general meeting as set out in rule 11.

**“Chief Executive”** means the chief executive officer of the Company

**“Company”** means Australian Local Government Association Limited ABN 31 008 613 876.

**“Director”** means a person who is, for the time being, a Director of the Company including, where appropriate, an Alternate.

**“expelled Member”** means a person who has been expelled as a Member pursuant to rule 2.6.

**“former Member”** means a person who is not a Member but used to be a Member;

**“general meeting”** means a meeting of Members.

**“Liability”** in rule 9 means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

**“local government”** has the same meaning as that term when used by the ABS in determining official Government Finance Statistics in relation to local government in Australia.

**“Material Personal Interest”** has the meaning given to it in rule 7.7

**“Member”** means a member of the Company (as stated at rule 2.1).

**“Member affiliate”** means: subject to rule 2.20:

- (a) in the case of a Member other than the ACT government, a person who is:
  - (i) a member of the committee of management or board of the Member or the nominee of the committee of management or board of the member; and
  - (ii) a councillor of a local government; and
- (b) in the case of the ACT government:
  - (i) an ACT Minister, or
  - (ii) a person lawfully appointed as a delegate of an ACT minister to represent the ACT Minister in respect of the ACT’s membership of the Company.

**“Members’ authorised representatives”** means a Member representative.

**“Member representative”** means an individual who:

- (a) represents a Member during a general meeting of the Company;

- (b) exercises or casts votes on behalf of the Member;
- (c) is a Member affiliate;
- (d) may be a Director; and
- (e) may be a body corporate representative under the Act.

“**month**” means calendar month

“**public holiday**” means a day that can be enjoyed by the whole of the population as a public holiday in the State in which the Company’s registered office is located.

“**Register**” means the Register of Members kept as required by the Act.

“**officer**” has the meaning given in the Act and includes:

- (a) a Director or Secretary; or
- (b) a person:
  - (i) who makes or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company;
  - (ii) who has the capacity to affect significantly the Company’s financial standing; or
  - (iii) in accordance with whose instructions or wishes the Directors are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person’s professional capacity or their business relationship with the Directors).

“**President**” means the person who is appointed to the office of President pursuant to rule 17.

“**Secretary**” means, during the term of that appointment, the person who is the secretary of the Company.

“**Senior Vice President**” means the Vice President who has longest continuous service as a Vice President.

“**State**” means:

- (a) a state of the Commonwealth of Australia; or
- (b) the ACT; or
- (c) the Northern Territory.

“**Vice President**” means the person who is appointed to the office of Vice President pursuant to rule 17.

## **Interpretation**

1.7 This Constitution is to be interpreted as follows, except where the context makes it clear that it is to be interpreted in another way:

- (a) headings are for convenience only, and do not affect interpretation;
- (b) a reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (iv) any thing (including a right, obligation or concept) includes each part of that thing;
- (c) a singular word includes the plural, and vice versa;
- (d) a word which suggests one gender includes the other gender;
- (e) if a word is defined, another part of speech has a corresponding meaning;
- (f) if an example is given of any thing (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- (g) a power to do something includes a power, exercisable in the like circumstances, to revoke or undo that something;
- (h) a reference to a power is also a reference to authority or discretion;
- (i) a reference to something being “written” or “in writing” includes that thing being represented or reproduced in any mode in a visible form; and
- (j) words (other than “remuneration” and those defined in rule 1.6) which are defined by the Act have the same meaning in this Constitution.

## **2 MEMBERSHIP**

### **Members of the Company**

2.1 The Members are the following entities:

- (a) the Local Government Association of NSW;

- (b) the Shires Association of NSW;
- (c) the Municipal Association of Victoria;
- (d) the Local Government Association of Queensland Inc.;
- (e) the Western Australian Local Government Association;
- (f) the Local Government Association of South Australia;
- (g) the Local Government Association of Tasmania;
- (h) the Local Government Association of the Northern Territory; and
- (i) the ACT Government.

2.2 In the event that the Local Government Association of NSW and the Shires Association of NSW merge:

- (a) the membership of the Local Government Association of NSW and the Shires Association of NSW shall be terminated; and
- (b) the new body corporate created as a result of the merger shall automatically be admitted by the Board as a Member of the Company.

### **Resigning as a Member**

2.3 A Member may resign its membership with the Company by giving not less than 3 months notice in writing to the Secretary, but remains liable for:

- (a) any annual subscription and all arrears due and unpaid at the date of its resignation;
- (b) all other moneys due by it to the Company; and
- (c) any sum not exceeding \$100 for which the Member is liable under rule 2.4.

### **Limited liability of Members**

2.4 If the Company is wound up, each Member and former Member must contribute to the assets of the Company up to an amount not exceeding \$100 for payment of the debts and liabilities of the Company including the costs of the winding up.

2.5 A former Member is not bound by rule 2.4 if the winding up takes effect more than one year after the former Member ceased to be a Member.

### **Expelling a Member**

2.6 The Members at a general meeting may by special resolution terminate the membership of a Member if:

- (a) the Board resolves that, in the opinion of the Board, the Member may have been guilty of conduct:
  - (i) that does not comply with this Constitution;
  - (ii) that does not comply with any by-laws, rules or regulations of the Company (including any failure to pay any annual subscription or other fee within three months of it becoming due and payable to the Company);
  - (iii) that does not comply with the Act; or
  - (iv) that is prejudicial to the interests of the Company.
- (b) the notice of general meeting specifies the purpose of the meeting and the general nature of conduct referred to in the Board's resolution; and
- (c) at least 21 days before the general meeting the Board has given the Member written notice which states:
  - (i) the allegations against the Member;
  - (ii) the proposed resolution for the Member's expulsion; and
  - (iii) that the Member has an opportunity at the general meeting to address the allegations either orally or in writing.

### **Continuing Obligations**

- 2.7 The termination of a membership for any reason does not in any way prejudice, lessen or otherwise affect the liabilities and obligations of a Member (whether they arise under this Constitution or otherwise) existing at the date of termination or which arise or crystallise after that date out of, or by reason of, facts or circumstances occurring or in existence at or before that date.
- 2.8 Subject to rule 1.4 and any written agreement between an expelled Member and the Company, an expelled Member does not have any claim on the Company or its funds or property.

### **Removal from the Register**

- 2.9 Upon the termination of membership of a Member for any reason the Secretary must immediately remove the name of that Member from the Register.

### **Subscriptions**

- 2.10 A general meeting must be held each year prior to 30 June for the purpose of determining annual or other periodic subscriptions and approving the Company's budget for the following financial year.
- 2.11 This meeting has power to determine a separate subscription in respect of each Member.

- 2.12 The annual subscription is to be paid in two instalments, the first not later than 31 July and the second not later than 31 December.
- 2.13 No Member affiliate shall be entitled to hold or be represented in an office of the Company other than the office of President unless all moneys presently payable to the Company have been paid by the relevant Member.
- 2.14 If a Member fails to pay any amounts payable under this Constitution for a period of three months after the due date for the payment of the amount:
- (a) the Member's rights and privileges of membership are suspended; and
  - (b) the Members may by special resolution resolve to terminate the Member's membership pursuant to rule 2.6.
- 2.15 The Board may extend the time for payment of subscription fees either generally or in any particular case. An extension of time beyond the financial year in which a subscription falls due must only be granted in cases of severe financial difficulty, and subject to such guarantees as the Board considers appropriate by the Member that outstanding amounts will be paid within an agreed period.

### **Levies**

- 2.16 The Board may make a levy on Members for any of the purposes of the Company.
- 2.17 Any such levy shall be made by resolution of the Board which shall set out:
- (a) the details of the resolution;
  - (b) the amount and manner in which the levy shall be charged against Members;
  - (c) the due date for payment of the levy; and
  - (d) any other matters incidental to the resolution or the levy.
- 2.18 A levy may be calculated by any method that the Board considers fit.

### **Refunds**

- 2.19 Unless a mistake has been made in the calculation of the amount of any subscription fee or levy to be paid, a Member shall not be entitled to a refund of any subscription fee or levy that it has paid.
- 2.20 Continuity of Service as a Member Affiliate

Breaks in eligibility to be a Member affiliate of up to 21 consecutive days during council or ACT elections, the dissolution or suspension of the entire committee of management or board of a Member, or the reassignment of ministerial portfolios are to be ignored for the purposes of determining whether a person who was previously a Member affiliate is still a Member affiliate unless:

- (a) In the case of a council elections, the person does not stand for re-election or is not re-elected as a councillor:
- (b) In the case of the dissolution or suspension of the entire committee of management or a board of a Member, the person does not stand for re-election or reappointment or is not re-elected or reappointed as a member of the committee of management or Board of the Member:
- (c) In the case of ACT elections, the person does not stand for re-election or is not re-elected as a Member of the Legislative Assembly:
- (d) In the case of the reassignment of ministerial portfolios , the person is not assigned a ministerial portfolio.

### **3 DIRECTORS**

#### **Composition of the Board**

- 3.1 Each State is to be represented on the Board by a maximum of two Directors appointed by the Members based in that State. In addition, the President will be an independent Director.
- 3.2 A Director must be and remain a Member affiliate.
- 3.3 On election to the office of President, that Director becomes independent of the relevant Member. That Member may then appoint a replacement Director for the term of office of the President.

#### **Cessation of Director's appointment**

- 3.4 A person immediately ceases to be a Director:
  - (a) if he or she is not permitted by the Act (or an order made under the Act) to be a Director;
  - (b) if he or she becomes disqualified from managing corporations under the Act and is not given permission or leave to manage the Company under the Act;
  - (c) if he or she becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
  - (d) if he or she fails to attend three continuous Board meetings (either personally or through an Alternate) without the leave of the Board;
  - (e) if he or she ceases to be a Member affiliate;
  - (f) except where he or she holds the office of President, if the Member who appointed him or her as a Director resolves that he or she must cease to be a Director; or

- (g) if he or she resigns his or her appointment by notifying the Board in writing.

### **Voting on the Board**

- 3.5 Each Director is entitled to cast or exercise one vote on each motion put at a Board meeting.

## **4 ALTERNATE DIRECTORS**

### **Appointment of Alternates**

- 4.1 Subject to rule 4.2, a Director may appoint an Alternate to exercise some or all of the Appointor's powers for a specified period. The appointment must be notified to ASIC.
- 4.2 A Director must not appoint an Alternate who is not a Member affiliate.
- 4.3 If the Appointor requests the Company to give the Alternate notice of Board meetings, the Company must do so.
- 4.4 When an Alternate exercises the Appointor's powers, the exercise of the powers is just as effective as if the powers were exercised by the Appointor.
- 4.5 The Appointor may terminate the Alternate's appointment at any time.
- 4.6 The appointment or termination of an Alternate must be in writing. A copy must be given to the Company.

### **Cessation of appointment of Alternate**

- 4.7 The appointment of an Alternate immediately ceases if:
  - (a) if it is terminated under rule 4.5;
  - (b) the Appointor ceases to be a Director; or
  - (c) an event occurs which would cause the Alternate to cease to be a Director under rule 3.4 if the Alternate were a Director.

### **Appointments and revocations in writing**

- 4.8 The Appointor must appoint, and revoke the appointment of, any Alternate in writing. The appointment or revocation is not effective until a copy is provided to the Company.

## **5 POWERS OF THE BOARD**

### **Powers generally**

- 5.1 Except as otherwise required by the Act, any other applicable law or this document, the Board:

- (a) has power to manage the business of the Company; and
- (b) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting.

### **Exercise of powers**

5.2 A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 10; or
- (b) in accordance with a delegation of the power under rule 6.

## **6 DELEGATION OF BOARD POWERS**

### **Power to delegate**

6.1 The Board may delegate any of its powers to any person, persons or committee as permitted by the Act.

### **Power to revoke delegation**

6.2 The Board may revoke a delegation irrespective of whether the delegation is expressed to be for a specified period or any other of the terms of the delegation.

### **Terms of delegation**

6.3 A delegation of powers under rule 6.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms and subject to any restrictions the Board decides.

6.4 A document of delegation may contain such provisions for the protection and convenience of those who deal with the delegate that the Board considers appropriate.

### **Proceedings of committees**

6.5 Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, so far as is practicable, governed by the rules of this Constitution that regulate the meetings and proceedings of the Board.

## **7 DIRECTORS' DUTIES AND INTERESTS**

### **Holding of other offices**

7.1 A Director is not disqualified by reason only of being a Director from:

- (a) holding any office or place of profit or employment other than that of the Company's auditor;

- (b) being a member or creditor of any corporation (including the Company) or partnership other than the auditor; or
- (c) entering into any agreement with the Company.

### **Disclosure of interests**

7.2 In addition to his or her duties under the Act, a Director must comply with all relevant general law principles in relation to disclosure of the Director's interests.

### **Voting on interested matter**

7.3 A Director who has a Material Personal Interest in a matter that is being considered at a Board meeting must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter.

7.4 Rule 7.3 does not apply if:

- (a) rule 7.5 or rule 7.6 allows the Director to be present; or
- (b) the Act does not require the interest to be disclosed.

7.5 The Director may be present and vote if the Directors who do not have a material personal interest in the matter have passed a resolution that:

- (a) identifies the Director, the nature and extent of the Director's interest in the matter and its relation to the affairs of the Company; and
- (b) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present.

7.6 The Director may be present and vote if they are so entitled under a declaration or order lawfully made by ASIC that allows the Director to be present.

### **Material Personal Interest**

7.7 Subject to the Act, for the purposes of this Constitution a Director has a Material Personal Interest in an issue if the Director has, or should reasonably have, a realistic expectation that, whether directly or indirectly, the Director or an associate stands to gain a benefit or suffer a loss, depending on the issue's outcome. However, a person does not have a Material Personal Interest if that interest is merely:

- (a) as a member of a non-profit, charitable or religious organisation involving no personal gain or loss to the person; or
- (b) as a member of another entity in which the person does not have personal financial interest.

### **Agreements with third parties**

7.8 The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure required by the Act or rule 7.2; or
- (b) breaches rule 7.3.

### **Director to give information to Company**

7.9 A Director must provide the Company with any information in his or her possession or control necessary for the Company to comply with the Act.

## **8 PRESIDENT'S REMUNERATION**

### **Payments to President with Board approval**

8.1 With the approval of the Board, the Company may pay to the President reasonable remuneration for any service rendered by the President to the Company.

## **9 OFFICERS' INDEMNITY AND INSURANCE**

### **Indemnity**

- 9.1 Subject to and so far as is permitted by the Act, to the extent that such an individual is not otherwise indemnified, the Company must indemnify every officer of the Company against Liability to any person incurred by such a person other than the Company, including Liability incurred as a result of an appointment or nomination by the Company as a trustee or as an officer of another corporation.
- 9.2 The Company may make a payment for legal costs incurred by an officer in defending an action for Liability incurred as an officer of the Company or in resisting or responding to actions taken by a government agency or a liquidator.
- 9.3 The Company is not required to comply with rule 9.1 if the Liability was incurred by the officer through that officer's own dishonesty, negligence, lack of good faith or breach of duty.

### **Former officers**

- 9.4 The indemnity in favour of officers under rule 9.1 is a continuing indemnity. It applies in respect of all acts done by an individual while an officer of the Company even though the individual is not an officer at the time the claim is made.

### **Insurance**

- 9.5 Subject to the Act, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

### **Deeds**

- 9.6 Subject to the Act, without limiting a person's rights under this rule 9, the Company may enter into an agreement with an individual who is or has been an officer of the Company to give effect to the rights of that individual under this rule 9 on any terms and conditions that the Board thinks fit.

## **10 BOARD MEETINGS**

### **Convening Board meetings**

- 10.1 A Director may at any time, and the Secretary must on request from a Director, convene a Board meeting by notice served pursuant to rule 10.2.

### **Notice of Board meeting**

- 10.2 The convenor of a Board meeting must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director and Alternate who is in Australia at the time the notice convening the meeting of the Board is issued.

- 10.3 A Director or an Alternate is deemed to be in Australia at the time a notice convening a Board meeting is issued unless the Secretary is, at that time, in possession of a notice from the particular Director or Alternate that indicates that he or she is not in Australia at the time.
- 10.4 Failure to give notice to, or non-receipt of notice by, a Director or Alternate does not make a Board meeting or any resolution passed at a Board meeting invalid.

### **Use of technology**

- 10.5 A Board meeting may be held using any technology that enables each Director participating in the meeting to simultaneously hear and be heard by each other Director participating in the meeting.
- 10.6 A Board meeting held solely or partly by technology is taken to have been held at the registered office of the Company.

### **Quorum**

- 10.7 A quorum at a Board meeting consists of a minimum of nine Directors from five different States and the quorum must be present at all times during the meeting.
- 10.8 If a quorum is not present within 30 minutes after the time for which the meeting is called the meeting is dissolved.
- 10.9 If during the course of a Board meeting at which a quorum has been present a quorum is no longer present, the meeting is adjourned and if a quorum is not restored within 30 minutes after the meeting is adjourned the meeting is dissolved.

### **Majority decisions**

- 10.10 Subject to rule 10.11 a resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- 10.11 In addition to his or her personal vote, the person presiding over a meeting has, in the event of an equality of votes (including under a poll) at a Board meeting that he or she chairs, a second or casting vote.

### **Procedural rules**

- 10.12 The Board may adjourn and, subject to this Constitution, otherwise regulate its meetings as it decides.
- 10.13 The President has authority to:
- (a) implement the policies of the Company, within budget and in conjunction with the Chief Executive; and
  - (b) where necessary to interpret those policies in order to respond to any need for urgent action between Board meetings.

10.14 Subject to rule 10.15, the Board may set and define the powers, authorities, discretions and duties of the Chief Executive and may alter or limit any such powers, authorities, discretions and duties in any manner.

10.15 The Board may not act under rule 10.14 if to do so would result in a repudiation by the Company of the Chief Executive's contract of employment with the Company.

### **Written resolution**

10.16 If all the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the minimum number of Directors required to pass the motion sign.

### **Additional provisions concerning written resolutions**

10.17 For the purposes of rule 10.16:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document; and
- (b) signature of a document by an Alternate is not required if the Appointor of that Alternate has signed the document;
- (c) signature of a document by the Appointor of an Alternate is not required if the Alternate has signed the document in the capacity of the Appointor's Alternate; and
- (d) a telex, telegram, facsimile, e-mail or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

### **Valid proceedings**

10.18 Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

### **Investments**

10.19 Where the Company's funds are not immediately required, the Board may invest and deal with the funds subject to the law for the investment of trust funds.

## **11 CHAIRING OF MEETINGS**

- 11.1 This rule 11 applies to Board meetings and general meetings.
- 11.2 The President shall preside over all meetings at which he or she is present.
- 11.3 In the absence or inability of the President to act, if the two Vice Presidents are present at the meeting they shall attempt to agree between themselves as to which one of them shall preside over the meeting.
- 11.4 If there is no agreement, the Chief Executive shall draw lots to determine which of the two Vice Presidents shall preside over the meeting.
- 11.5 In the absence, inability or refusal of the President and both of the Vice Presidents to act, the Board shall appoint another Director to preside over the meeting.

## **12 MEETINGS OF MEMBERS**

### **Annual general meeting**

- 12.1 Subject to the Act, the Company must hold an annual general meeting at least once in each calendar year and within 5 months after the end of its financial year.

### **Convening meetings of Members**

- 12.2 A general meeting:
- (a) may be convened at any time by the Board or a Director;
  - (b) may be convened at any time by a Member in accordance with the Act; and
  - (c) must be convened by the Board when required by the Act or by court order made under the Act.

### **Notice of meeting**

- 12.3 Subject to rule 12.5, at least 21 days' written notice of a general meeting must be given individually to:
- (a) each Member (whether or not the Member is entitled to vote at the meeting);
  - (b) each Director;
  - (c) the Chief Executive; and
  - (d) the auditor.
- 12.4 The notice of meeting must comply with the Act and may be given in any manner permitted by the Act.

### **Short notice**

- 12.5 Subject to any provisions of the Act requiring 21 days notice in relation to the removal and appointment of Directors and/or removal of auditors:

- (a) if the Company has elected to convene a general meeting as the annual general meeting, if all the Members entitled to attend and vote agree; or
- (b) otherwise, if Members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

### **Postponement of cancellation**

12.6 Subject to time limit requirements in the Act, the Board may:

- (a) postpone a general meeting;
- (b) cancel a general meeting; or
- (c) change the place for a general meeting,

by giving written notice individually to each person entitled to notice of the meeting.

### **Fresh notice**

12.7 If a general meeting is postponed or adjourned for one month or more, the Company must give new notice of the resumed meeting.

### **Technology**

12.8 The Company may hold a general meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

### **Accidental omission**

12.9 Accidentally omitting to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a general meeting.

## **13 PROCEEDINGS AT GENERAL MEETINGS**

### **Member present at meeting**

13.1 If a Member has appointed a Member representative to represent that Member at a general meeting, that Member is taken to be present at a meeting at which the Member representative is present.

### **Quorum**

13.2 Five different Members from five different States who can together exercise more than 50% of the total voting entitlement of all Members constitute a quorum and the quorum must be present at all times during the meeting.

13.3 Each individual Member present may only be counted once toward a quorum.

### **Quorum not present**

- 13.4 If a quorum is not present within 30 minutes after the time for which a general meeting is called:
- (a) if called as a result of a request of Members under the Act, the meeting is dissolved; and
  - (b) in any other case:
    - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to Members, or if no decision is notified before then to the same time on the same day in the next week at the same place; and
    - (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.
- 13.5 If during the course of a general meeting at which a quorum has been present a quorum is no longer present, the general meeting is adjourned and if a quorum is not restored within 30 minutes after the meeting is adjourned the meeting is dissolved.

### **Attendance at general meetings**

- 13.6 Every Member has the right to attend all general meetings, subject to rule 2.
- 13.7 Every Director has the right to attend and speak at all general meetings.
- 13.8 The auditor has the right to attend any general meeting and to speak on any part of the business or the meeting that concerns the auditor in the capacity of auditor.

### **Adjournment**

- 13.9 Subject to rule 13.10, the chairman of a general meeting at which a quorum is present:
- (a) may adjourn the meeting to another time and place; and
  - (b) must adjourn the meeting to another time and place if directed to do so by ordinary resolution of the meeting.

### **Business at adjourned meetings**

- 13.10 The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

## **14 MEMBER REPRESENTATIVES AT GENERAL MEETINGS**

### **Appointment of Member representative**

- 14.1 A Member who is entitled to attend and cast a vote at a general meeting must appoint two Member representatives to attend and vote for the Member, but may

appoint additional Member representatives provided that the total number of Member representatives is less than or equal to the total number of votes the Member may exercise at a general meeting.

- 14.2 The appointment may specify the proportion or number of votes that each Member representative may exercise.
- 14.3 An appointment of a Member representative must be made by written notice to the Company in a form that is signed or acknowledged by the Member in a manner satisfactory to the Board.

#### **Deposit of Member representative forms**

- 14.4 An appointment of a Member representative is not effective for a particular general meeting unless the Member representative form is received by the Company at its registered office or a fax number at that office (or another address specified for the purpose in the relevant notice of meeting) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the meeting is resumed.
- 14.5 In relation to a general meeting convened pursuant to rule 12.6, an appointment of a Member representative is effective if the Member representative form is received by the Company before the meeting commences or, if the meeting has been adjourned, before the meeting is resumed.

#### **Continuing authority**

- 14.6 An act done at a general meeting by a Member representative is valid even if, before the act is done, the appointing Member:
- (a) dies or becomes mentally incapacitated;
  - (b) becomes bankrupt or an insolvent under administration or is wound up;  
or
  - (c) revokes the appointment,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

#### **Member deemed to be present at meeting**

- 14.7 A Member shall be taken to be present at a general meeting where the Member is represented by a properly appointed Member representative.

### **15 ENTITLEMENT TO VOTE**

#### **Voting entitlement**

- 15.1 Prior to the annual general meeting of the Company, the Chief Executive will review the voting entitlements of the Members and will allocate votes according to the following formula, rounding to the nearest whole number:

$$\text{Voting entitlement} = (A/B \times 0.3 + C/D \times 0.3 + 1/E \times 0.4) F$$

Where:

A = the population of the State in which the Member is based.

B = the population of Australia.

C = three year average State expenditure by local government in the State in which the Member is based as determined by the ABS.

D = total Australian three year average expenditure by local government as determined by the ABS.

E = the total number of States.

F = the total number of votes to be allocated amongst the members, as determined by the Board which shall not be an even number.

For the ACT:  $C = G / ((H+G) - I) \times J$

G = the sum of total three year average “general government expenses by purpose – local” for all States.

H = total three year average “general government expenses by purpose” for Australia.

I = Total three year average “general government expenses by purpose” for the Commonwealth.

J = Total three year average “general government expenses by purpose” for the ACT.

- 15.2 Where a State’s expenditure published by the ABS includes payments other than for municipal services, then item C of the formula will be determined by multiplying the average three year total expenditure of that State by the quotient resulting from the division of aggregating the average three year total expenditure of local government into the average three year total expenditure of States and local government for Australia.
- 15.3 In applying the formula under this rule 15, the Chief Executive is required to rely on the statistics published by the ABS.
- 15.4 The Chief Executive’s calculations under this rule are conclusive except in the face of manifest error.
- 15.5 Not less than 30 days prior to the first general meeting in each financial year, the Chief Executive must advise each Member of its voting entitlements, unless the voting entitlements for the Member have not changed.
- 15.6 At every general meeting, a Member is entitled to exercise the number of votes most recently advised to it by the Chief Executive.

## **Voting restrictions**

- 15.7 No Member representative is entitled to attend or vote at any general meeting unless all moneys then due and payable by the relevant Member to the Company have been paid.

## **Decision on right to vote**

- 15.8 A Member representative or a Director may challenge a Member representative's right to vote at a general meeting. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided at the meeting by the chairman, whose decision is final.

## **16 HOW VOTING IS CARRIED OUT**

### **Method of voting**

- 16.1 A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded under rule 16.2 either before or on declaration of the result of the vote on a show of hands. Unless a poll is demanded, the chairman's declaration of a decision on a show of hands is final.

### **Demand for a poll**

- 16.2 A poll may be demanded on any resolution (except a resolution concerning the election of the chair of a meeting):
- (a) as permitted under the Act; or
  - (b) by the chair.
- 16.3 The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

### **When and how polls must be taken**

- 16.4 If a poll is demanded:
- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and in the manner that the chairman of the meeting directs;
  - (b) in all other cases, the poll must be taken at the time and place and in the manner that the chairman of the meeting directs; and
  - (c) the result of the poll is the resolution of the meeting at which the poll was demanded.

### **Resolutions of Members**

- 16.5 Any resolution of Members will not be taken to be carried whether on a show of hands or a poll unless the requisite majority comprises the following:

- (a) in the case of a resolution of Members, there is an affirmative vote of more than 50% of the voting entitlement exercisable by Members' authorised representatives present;
- (b) in the case of a special resolution of Members, there is an affirmative vote of not less than 75% of the voting entitlement exercisable by Members' authorised representatives present.

## **17 OFFICE BEARERS**

### **Office Bearers**

17.1 The office bearers of the Company consist of:

- (a) a President; and
- (b) two Vice Presidents.

### **Appointment of Office Bearers**

- 17.2 Subject to rule 2.14, a Director who has been appointed as a Director by a Member is eligible for election as an office bearer.
- 17.3 Prior to the election of office bearers, Members will appoint a returning officer who will conduct the election. The election of office bearers takes place by secret ballot of Members at every second annual general meeting.
- 17.4 Nominations for the position of President and Vice Presidents must be made in writing by a Member on a form approved for that purpose by the Board, and forwarded to the Company not less than 28 days prior to the annual general meeting at which the election is to be held.

### **Term of appointment**

- 17.5 The term of an office bearer commences at the conclusion of the annual general meeting at which he or she is elected and ends at the conclusion of the second annual general meeting thereafter.
- 17.6 A Director must not serve more than two consecutive terms as President.
- 17.7 A Director must not serve more than two consecutive terms as a Vice President.

### **Vacancies**

- 17.8 A Director immediately ceases to be a President or Vice President:
- (a) if he or she ceases to be a Director;
  - (b) if he or she resigns his or her appointment by notifying the Board in writing; or
  - (c) if he or she is removed from office by a special resolution passed by the Members at a general meeting.

- 17.9 In the event of a vacancy in the office of President by reason of rule 17.8, the Board will appoint a Director to be the President until a President is appointed by the Members pursuant to rules 17.10 – 17.12.
- 17.10 The Board must convene a general meeting as soon as is practicable in the event of a vacancy in the office of the President or a Vice President.
- 17.11 The Board must do the things set out in rules 17.12 and 17.13 at the general meeting convened pursuant to rule 17.10.
- 17.12 In the event of a vacancy in the office of President, the Members shall appoint a Director to be the President.
- 17.13 In the event of a vacancy in the office of Vice President, the Members shall appoint a Director to be a Vice President.
- 17.14 The term that a Director serves as the President or a Vice President pursuant to rules 17.9 – 17.13:
- (a) shall commence at the time the vacancy occurs (in the case of rule 17.9) or at the conclusion of the meeting at which the appointment is made (in the case of rules 17.12 and 17.13);
  - (b) shall end at the conclusion of the next annual general meeting at which elections are to be held for office bearers; and
  - (c) shall not be taken into account for the purposes of rules 17.6 and 17.7 if the term commences less than 6 calendar months before the next annual general meeting at which elections are to be held for office bearers; and
  - (d) shall be taken into account for the purposes of rules 17.6 and 17.7 if the term commences 6 or more calendar months before the next annual general meeting at which elections are to be held for office bearers.

## **18 CHIEF EXECUTIVE AND SECRETARY**

### **Appointment of Chief Executive**

- 18.1 The Board will appoint a person as the Chief Executive of the Company:
- (a) for a fixed term which may be extended; and
  - (b) subject to this Constitution, on such terms and conditions that the Board determines, including the terms on which the Board will appoint a person as a temporary substitute for the Chief Executive while he or she is absent or unable to act.

### **Removal, suspension, replacement of absent Chief Executive**

- 18.2 The Board may:
- (a) remove or dismiss or suspend the Chief Executive from that office and appoint another in his or her place; or

- (b) appoint a temporary substitute for the Chief Executive while the Chief Executive is absent or unable to act.

18.3 For avoidance of doubt, the Chief Executive retains any rights that accrue to him or her under his or her contract of employment with the Company upon termination if the Board acts in accordance with rule 18.2(a).

#### **Chief Executive is not a Director**

18.4 The Chief Executive is not a Director.

18.5 The Chief Executive is not eligible to be a Director while he or she is the Chief Executive.

#### **Chief Executive is an officer**

18.6 The Chief Executive is an officer of the Company.

#### **Powers of Chief Executive**

18.7 The Directors may entrust to and confer on the Chief Executive such of the powers exercisable under this Constitution by the Directors as the Directors think fit.

#### **Cessation of Chief Executive's appointment**

18.8 A person immediately ceases to be the Chief Executive if:

- (a) he or she is not permitted by the Act (or an order made under the Act) to be an officer of a company;
- (b) he or she becomes disqualified from managing corporations under the Act and is not given permission or leave to manage the Company under the Act;
- (c) he or she becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) his or her employment as Chief Executive terminates or is terminated.

#### **Secretary**

18.9 A Secretary or Secretaries will be appointed and may be removed by the Board in accordance with the Act.

18.10 The Chief Executive may be the Secretary.

#### **Chief Executive and Secretary to give information to Company**

18.11 The Chief Executive and the Secretary must provide such information to the Company so as to enable it to comply with the Act.

## **19 MINUTES**

### **Minutes must be kept**

- 19.1 The Board must cause minutes of the following to be kept in accordance with the Act:
- (a) proceedings and resolutions of meetings of the Company's Members;
  - (b) the names of Directors present at each Board meeting or committee meeting;
  - (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 6);
  - (d) resolutions passed by Directors without a meeting;
  - (e) all appointments of officers made by the Board;
  - (f) disclosures made and notices given under rule 7; and
  - (g) any other minutes that are required to be kept by the Act.

### **Minutes as evidence**

- 19.2 A minute recorded and signed in accordance with the Act is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

### **Inspection of minute books**

- 19.3 The Company must allow Members to inspect, and provide copies of, the minute books for the meetings of Members in accordance with the Act.

## **20 FINANCIAL REPORTING**

### **Company must keep financial records**

- 20.1 The Board must cause the Company to keep written financial records that:
- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
  - (b) would enable true and fair financial statements to be prepared and audited.
- 20.2 A Director and the auditor may inspect the Company's financial records at any reasonable time.

### **Financial reporting**

- 20.3 The Board must cause the Company to prepare a financial report and a Directors' report that comply with the Act and must report to Members in respect of such

financial reports in accordance with the Act.

### **Audit**

20.4 The Board must ensure the Company's financial reports for each financial year are audited and obtain an auditor's report.

### **Conclusive reports**

20.5 Audited financial reports laid before the Company in general meetings are conclusive except as regards errors notified to the Company within three months after the relevant general meeting. If the Company receives notice of an error within that period, it must immediately arrange for the report to be corrected. The report so corrected shall be taken to be conclusive.

### **Inspection of financial records and books**

20.6 Subject to the Act, a Member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by a resolution of the Members.

## **21. WINDING UP**

21.1 If the Company is wound up any surplus assets must not be paid to Members but must be paid or transferred to a charitable organisation or a company limited by guarantee that complies with the requirements of the Act.

## **22. NOTICES**

### **Notices by Company**

22.1 A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original, printed or computer generated signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
  - (i) delivered personally;
  - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address; or
  - (iii) sent by fax to the fax number (if any) nominated by that person; or
  - (iv) sent by electronic message or e-mail to the electronic address or e-mail address (if any) nominated by that person.

## **When notice is given**

- 22.2 A notice to a person by the Company is regarded as given and received:
- (a) if it is delivered or sent in a manner referred to in rule 22.1(c)(i), (iii) or (iv):
    - (i) by 5.00 pm (local time in the place of receipt) on a business day – on the day that it is delivered or sent; or
    - (ii) after 5.00 pm (local time in the place of receipt) on a business day or on a day that is not a business day – on the next business day; and
  - (b) if it is sent in the manner referred to in rule 22.1(c)(ii):
    - (i) within Australia – 3 business days after posting; or
    - (ii) to a place outside Australia – 7 business days after posting.
- 22.3 A certificate in writing signed by a Director, a Secretary or the Chief Executive stating that a notice was sent is conclusive evidence of service.

## **Counting days**

- 22.4 If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

## **23. DISPUTE RESOLUTION**

### **Notice of Dispute**

- 23.1 In the event of any disagreement or dispute arising between any or all of the Members as to the interpretation, implementation or enforcement of any term of this Constitution, any Member may send a notice to all of the Members setting out the details of that dispute (“Notice of Dispute”).
- 23.2 A Member which serves a Notice of Dispute may withdraw it by giving written notice to all Members.

### **Resolution of Disputes**

- 23.3 Following receipt of a Notice of Dispute each Member must enter into good faith discussions with the other Members with a view to resolving the dispute.
- 23.4 Where the Members have not resolved the dispute within 14 days after the date of service of the Notice of Dispute to the Members, those Members must appoint an arbitrator agreed by those Members to determine the dispute.
- 23.5 If the Members do not agree on the appointment of an expert under rule 23.4 within 7 days after the need to appoint an arbitrator arises, then any Member may request the President of the Institute of Arbitrators of Australia (or such other

body as carries on the functions of the Institute) or his or her nominee to appoint an arbitrator to determine the dispute. Such arbitrator shall be a person who, by virtue of his or her qualifications and/or experience, has an appropriate familiarity with and understanding of the nature of the matters in dispute.

- 23.6 The arbitration process will be conducted in accordance with the *Commercial Arbitration Act 1984 (ACT)*.

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