



**CONSTITUTION
OF
FINANCIAL SERVICES COUNCIL LIMITED
ABN 82 080 744 163**

[Consolidated for amendments up to and including 18 October 2019]

Changes inserted on 18 October 2019 do not come into effect until the date approved by the Board, not later than 1 July 2020.

CORPORATIONS ACT 2001
A Company Limited by Guarantee

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1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Constitution, except where the context otherwise requires, the following words have the meanings indicated below:

'Additional Category Member' has the meaning given to that expression in **Clause 2.7¹**;

'Associate Member' has the meaning given to that expression in **Clause 2.2(c)**;

'Board' means the board of directors;

'Business Day' means a day on which banks (as defined in the *Banking Act 1959 (Cth)*) are open for general banking business in New South Wales, excluding Saturdays and Sundays;

'Company' means Financial Services Council Limited;

'Default Rate' means 2% above the Interest Rate;

'Full Member' has the meaning given to that expression in **Clause 2.2(a)**;

'Honorary Member' means an individual who is granted honorary membership of the Company as provided for in **Clause 2.2(c)**;

'Independent' refers to an individual being **'Independent'** for the purposes of **Clause 15.7A** if the person:

- (a) is not, and has not been, employed in an executive capacity by the Company or any of its subsidiaries and there has been a period of at least three years between ceasing such employment and serving as Chairman of the SODC;
- (b) does not receive performance-based remuneration (including options or performance rights) from, and does not participate in an employee incentive scheme of, the Company;
- (c) is not, and has not been within the last three years, in a material business relationship (for example, as a supplier, professional adviser, consultant or customer) with the Company or any of its subsidiaries, and is not an officer of, or otherwise associated with, someone with such a relationship;
- (d) is not, and has not been within the last three years an officer or employee of, or professional adviser to, a person that has a substantial holding in the Company;
- (e) does not have close personal ties with any person who fall with any of the categories described in paragraphs (a) to (d) above; and
- (f) has not been a director of the Company for such a period that their independence from management and substantial shareholders may have been compromised.²

'Industry' means the trustee company services³, managed investment, superannuation, funds management, financial advice⁴ and life insurance industries;

'Interest Rate' means the average rate displayed on the Reuters Page Bank Bill Swap rates for 90 day bank bills at 10:10am Sydney time applicable on the last Business Day

¹ Inserted by Special Resolution at 2017 Annual General Meeting on 1 November 2017

² Inserted by Special Resolution at 2019 Annual General Meeting on 18 October 2019

³ Inserted by Special Resolution at Extraordinary General Meeting held 21 February 2012.

⁴ Inserted by Special Resolution at 2011 Annual General Meeting on 25 October 2011.

of the month during which any amount is outstanding or such other comparable rate as may be determined by the Board;

'Member' means a person registered as a member in the Register, and includes a Full Member, a Supporting Member, an Additional Category Member⁵, an Associate Member and an Honorary Member;

'Member's Nominee' means the person appointed by a Member under **Clause 3.2**;

'Member's Representative' means a person authorised by a Member to act as its representative under **Clause 9.2**;

'Nominations Committee' means the committee appointed under **Clause 18**;

'Register' means the register of Members of the Company maintained in accordance with the *Corporations Act 2001*;

'The seal' means the common seal of the Company;

'Secretary' means any person appointed to perform the duties of a secretary of the Company and includes an honorary secretary.

'Supporting Member' has the meaning given to that expression in **Clause 2.2(b)**.

1.2 In this Constitution:

- (a) the word person includes a firm, body corporate, an unincorporated association or an authority;
- (b) the singular includes the plural and vice versa;
- (c) expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography and other modes of representing or reproducing words in a visible form including facsimile and email;
- (d) words or expressions contained in this Constitution shall be interpreted in accordance with the provisions of the *Corporations Act 2001* as in force at the date at which this Constitution become binding on the Company;
- (e) any thing which is required by this Constitution to be signed by a person shall be deemed to be signed by a person which is a firm, body corporate, unincorporated association or an authority, if executed under the seal of that person or under the hand of an officer, representative or attorney of that person duly authorised.

1.3 Headings are inserted for convenience and do not affect the interpretation of this Constitution.

1A.0 OBJECTS

1A.1 The objects of the Company are to advance the efficiency and integrity of the Australian financial system as follows:

- (a) To research, promote and distribute guidelines and/or papers in respect of the Industry and to provide effective leadership and support to Members so that they may effectively meet the needs of investors, customers and policy holders that engage with the Industry.

⁵ Inserted by Special Resolution at 2017 Annual General Meeting on 1 November 2017

- (b) To act for all purposes as a representative body of the Industry and in particular to provide a channel for:
 - (i) communication and representation at political levels as well as with relevant authorities, bodies and organisations relating to the management and/or regulatory control of the Industry;
 - (ii) any necessary public relations efforts in support of the Industry, including public information and education; and
 - (iii) undertaking training activities of a technical nature for Members.
- (c) To provide a channel of communication and a forum for discussion between representatives of the Industry and other interested parties on matters of mutual concern and general issues of principle.
- (d) To undertake activities aimed at stimulating products offered by the Industry.
- (e) To act as the focal point for the development of professional standards and codes of practice where appropriate, and maintaining institutional support for the Life Insurance Complaints Services and similar bodies in the Industry.
- (f) To act as a consulting and advisory body among Members and in particular to:
 - (i) inform Members of existing and proposed regulations affecting the Industry;
 - (ii) encourage a sharing of information between Members; and
 - (iii) provide a forum for discussion of issues such as promotion and marketing, and any other matter which is relevant to the Industry.
- (g) To support and sponsor educational programs, meetings and seminars with a view to informing members of the public of all relevant aspects of the Industry⁶

2.0 MEMBERSHIP – CATEGORIES

- 2.1 Such persons as the Board admits to membership in accordance with this Constitution shall be Members of the Company.
- 2.2 Unless and until the Members in general meeting create additional classes of membership, which they may do from time to time, there shall be four categories of Members of the Company as follows:
 - (a) ‘Full Members’, being organisations actively participating in the Industry who apply for and are granted membership of the Company as Full Members and are registered in the Register as such⁷;
 - (b) ‘Supporting Members’, being any organisations that provide professional services to the Industry, or in other ways are related to trustee company services⁸, managed investment, superannuation, funds management, financial advice⁹ and life insurance industries, and support the objects of the Company;

⁶ Inserted by Special Resolution at 2016 Annual General Meeting on 31 October 2016

⁷⁷ Inserted by Special Resolution at 2017 Annual General Meeting on 1 November 2017

⁸ Inserted by Special Resolution at Extraordinary General Meeting held 21 February 2012.

⁹ Inserted by Special Resolution at 2011 Annual General Meeting on 25 October 2011.

- (c) 'Additional Category Member', being a member who is so characterised in accordance with Clause 2.7¹⁰
- (d) 'Associate Members', being any person or entity (other than a natural person except as provided in this Clause 2) admitted to that category of membership which entitles the member to access all such information and material, in whatever form or medium, provided or available to Full Members and Supporting Members, together with such other rights, privileges and entitlements, not inconsistent with this Constitution, as the Board or the Chief Executive Officer may from time to time determine, including without limitation the following:
 - (i) preferential or discounted rates to events sponsored or organised by the Company;
 - (ii) access to the Members-only portal on the Company's website;
 - (iii) updates in relation to surveys undertaken by or on behalf of the Company; and
- (e) 'Honorary Members', being any person:
 - (i) who has been nominated by the Board as an Honorary Member of the Company because that person has, in the opinion of the Board, made over a period of years a significant contribution or has rendered significant service to the Industry;
 - (ii) who has consented to be an Honorary Member;
 - (iii) whose nomination has been approved by an ordinary resolution passed at a general meeting of the Company; and
 - (iv) who is registered in the Register as an Honorary Member.

2.3 Notwithstanding anything expressed or implied in this Constitution, a Supporting Member shall have the right to attend and be heard at any general meeting of the Company, but will not be:

- (a) entitled to vote at general meetings; or
- (b) eligible for election to the Board

and all references in this Constitution to the voting entitlements of Members at general meetings are references to the voting entitlements of Full Members.

2.4 An Honorary Member shall have the right to attend and be heard at any general meeting of the Company, but will have no other rights and privileges of membership under this Constitution.

2.5 Notwithstanding anything expressed or implied in this Constitution, an Associate Member will have the rights and entitlements only as set out above in this Clause and expressly does not have any rights in respect of the following matters:

- (a) attendance and hearing at any general meeting of the Company;
- (b) election to the Board;
- (c) service on or participation in to any Committee, working group or technical group of the Company.

¹⁰ Inserted by Special Resolution at 2017 Annual General Meeting on 1 November 2017

- 2.6 For clarity, it is expressly provided that a natural person will not be entitled to be granted membership as an Associate Member of the Company without the express consent of the Chief Executive Officer, which consent may be subject to such conditions and terms as the Chief Executive Officer determines in any particular case.
- 2.7 Notwithstanding anything to the contrary expressed or implied in this Constitution, the Chief Executive Officer will have power from time to time to create such further categories (including sub-categories) of membership in addition to those contemplated by this Clause, as the Chief Executive Officer, after appropriate consultation with the Board, determines. Any such category or sub-category however will not confer any of the following rights, unless the Board otherwise determines and so directs:
- (a) any entitlement to vote at general meetings; or
 - (b) eligibility for election to the Board.

(Additional Category Member)¹¹

3.0 MEMBERSHIP - APPLICATION FOR MEMBERSHIP

- 3.1 Every application for membership of the Company must be:
- (a) made in writing in such form as the Board from time to time prescribes; and
 - (b) signed by the applicant.
- 3.2 Any organisation applying for membership as a Member, must nominate one person to represent the applicant in the Company ('**Member's Nominee**'). The application form from the organisation must state the name and address of the person so nominated, and must include or be accompanied by the written consent of that person to being nominated as the representative of the organisation.
- 3.3 In respect of any application for membership of the Company, or in the event that additional classes of membership of the Company are created, the Board may require the application to be accompanied by such information or documentation as it may reasonably determine in support of the type of membership application being made.
- 3.4 At the next meeting of the Board after the receipt of an application for membership, the application must be considered by the Board, which shall determine whether to admit or reject the application. In no case will the Board be required to give any reason for the rejection of an applicant as a Member of the Company.
- 3.5 When an applicant has been accepted for Membership, the Secretary shall send to the applicant written notice of its acceptance and a request for payment of the first annual levy and any applicable entrance fee. Upon payment of any applicable entrance fee and first annual levy the applicant shall become a Member of the Company, provided nevertheless that if such payment be not made within two calendar months after the date of the notice, the Board may in its discretion cancel its acceptance of the applicant for Membership of the Company.

¹¹ Inserted by Special Resolution at 2017 Annual General Meeting on 1 November 2017

4.0 MEMBERSHIP - NOTIFICATION BY MEMBERS

- 4.1 Each Member must promptly notify the Secretary in writing of any change in the qualification of such member to be a member of the Company.
- 4.2 Each Member which is an organisation must promptly notify the Secretary in writing of any change in the Member's Nominee, such notification to be accompanied by the consent of the substitute person to being the Member's Nominee.

5.0 MEMBERSHIP - LEVIES AND APPLICATION FEES

- 5.1 The annual levy payable by each class of members of the Company and the application fee (if any) payable by Members shall be such sum as the Board may from time to time prescribe.
- 5.2 All annual levies shall become due and payable in accordance with a determination of the Board.
- 5.3 If an application for membership of the Company is made and approved during the levy year, the Board may, at its discretion, reduce the annual levy payable by an amount proportionate to the number of months which have expired from the beginning of the levy year to the date of admission to membership.
- 5.4 No annual levy shall be payable by any Honorary Member.

6.0 MEMBERSHIP - LEVIES

- 6.1 Annual membership levies shall be determined by the Board from time to time.
- 6.2 The amount of levy shall be calculated on a class of membership basis.
- 6.3 A methodology applicable to the class of membership shall be determined by the Board and applied to each member of that class for the calculation of the levy for the member for the relevant year.
- 6.4 The levy shall be due and payable not more than one month after the date of the general meeting as notified in the levy notice issued to the Member
- 6.5 If any levy is imposed on Members and becomes due and payable during the 12 months immediately preceding the date upon which any applicant is admitted to membership, the Board may determine in its absolute discretion whether such levy or any part thereof shall be paid by the applicant upon being admitted to membership. The Board must notify the applicant of any such determination before the applicant is admitted to membership.
- 6.6 If the Board notifies the applicant in accordance with **Clause 6.5** and the applicant does not wish to pay the levy it shall advise the Board within seven days after receipt of such notification and the application for membership shall be deemed to have been withdrawn.
- 6.7 If a levy payable by a Member is not paid when due, that Member must pay interest on the amount from time to time outstanding from the due date for payment until such sum is paid in full at the Default Rate. Interest shall be payable on demand and shall accrue daily.
- 6.8 If the levy payable by a Member remains unpaid for a period of two calendar months after it becomes due, then after written notice of the default has been sent to the Member by the Secretary, the Board may, by resolution, debar the Member from all privileges of

membership, provided that the Board may reinstate the Member on payment of all arrears (including interest) if the Board thinks fit to do so.

7.0 MEMBERSHIP - CESSATION

- 7.1 A Member may, on giving six months' notice in writing¹² to the Secretary (or such shorter period as the Board may in its absolute discretion accept), resign its membership of the Company but shall continue to be liable for any annual levy and all arrears due and unpaid at the date of its resignation and for all other moneys due by it to the Company in respect of the applicable notice period.
- 7.2 If a Member has not paid all arrears of annual levies or levies in accordance with **Clauses 5 and 6**, the Member will remain liable for all the obligations and liabilities of membership until the expiration of 12 months following the date of notification in accordance with **Clause 6.8**, whereupon the Member will cease to be a Member of the Company and the Member's name will be removed from the Register.
- 7.3 (a) If any Member, or where applicable, Member's Nominee wilfully¹³ refuses or fails to comply with the provisions of this Constitution or its by-laws, regulations or rules, or is guilty of any conduct which in the opinion of the Board is:
- (i) unbecoming of a Member or a Member's Nominee; or
 - (ii) prejudicial to the interests of the Company; or
 - (iii) likely to mean that the Member will be unable to comply with its obligations under this Constitution; or
 - (iv) in breach of the reasonable directives of the Board;
- the Board may, by resolution, censure, fine, suspend or expel the Member from the Company or require a Member to appoint a new Member's Nominee.
- (b) The Member or, where applicable, the Member's Nominee, shall be given at least one week's notice of the meeting of the Board at which it proposes to pass any such resolution, and of what is alleged against the Member or the Member's Nominee and of the intended resolution.
- (c) The Member or the Member's Nominee shall at such meeting and before the passing of such resolution have an opportunity of giving orally or in writing any explanation or defence the Member or the Member's Nominee may think fit.
- (d) Any such Member or the Member's Nominee may, by notice in writing lodged with the Secretary at least 24 hours before the meeting at which the resolution is to be considered by the Board, elect to have the question dealt with by the Company in general meeting.
- (e) If an extraordinary general meeting of the Company is called for the purpose and such a resolution is passed as a special resolution, the Member or the Member's Nominee concerned shall be punished accordingly and in the case of a resolution for expulsion the Member shall be expelled.
- (f) Any Member which calls for the question to be dealt with by the Company in general meeting under **paragraph (d)** shall be liable for all reasonable costs in convening

¹² Inserted by Special Resolution at 2017 Annual General Meeting on 1 November 2017

¹³ Inserted (spelling correction) by Special Resolution at 2019 Annual General Meeting on 18 October 2019

and holding the meeting if the resolution is passed as a special resolution, as referred to in **paragraph (e)**.

- (g) Any Member which is expelled will remain liable for any annual levy and all arrears due and unpaid at the date of ceasing to be a Member.

8.0 GENERAL MEETINGS - CONVENING, NOTICE AND BUSINESS

- 8.1 An annual general meeting of the Company shall be held in accordance with the provisions of the *Corporations Act 2001*. All general meetings, other than the Annual General Meeting, shall be called extraordinary general meetings.
- 8.2 The Board may whenever it thinks fit convene an extraordinary general meeting of the Company.
- 8.3 Ten or more Members may convene an extraordinary general meeting of the Company.
- 8.4 Subject to the provisions of the *Corporations Act 2001* and any determination of the Board as to a shorter period of notice, at least 28 days' notice¹⁴ (exclusive of the day on which the notice is served or deemed to be served, and exclusive of the day for which notice is given), specifying the place, the day and 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 Company.

9.0 GENERAL MEETINGS - PROCEEDINGS

- 9.1 Any Member may be represented at any meeting of the Company by a proxy or attorney.
- 9.2 A Member, entitled to vote at a general meeting of the Company, may by resolution of its directors, authorise such person as it thinks fit to act as its representative either at a particular general meeting or at all general meetings of the Company.
- 9.3 A Member's Representative is, in accordance with his or her authority and until it is revoked by the Member, entitled to exercise the same powers on behalf of the body corporate as the body corporate could exercise if it were a natural person who was a Member.
- 9.4 Unless the contrary intention appears, a reference to a Member in the succeeding provisions of **Clauses 9 and 10** means a Member, a proxy or attorney of a Member's Representative.
- 9.5 No business shall be transacted at any general meeting unless a quorum of Full Members is present at the time when the meeting proceeds to business. Unless the Members determine otherwise in general meeting, five Full Members present shall be a quorum.
- 9.6 If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened on 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 (being not less than three Full Members) shall be a quorum.

¹⁴ Inserted by Special Resolution at 2017 Annual General Meeting on 1 November 2017

- 9.7 The Chairman shall preside as Chairman at every general meeting of the Company, or if there is no Chairman, or if the Chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, one of the Deputy Chairmen shall be the Chairman or if neither Deputy Chairman is present or willing to act then the Members present shall elect one of their number to be the Chairman of the meeting.
- 9.8 The Chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting. It shall not otherwise be necessary to give any notice of an adjournment or the business to be transacted at an adjourned meeting.

10.0 GENERAL MEETINGS - VOTING

- 10.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:
- (a) the Chairman; or
 - (b) at least three Members.
- 10.2 Unless a poll is so demanded and not withdrawn, a declaration by the Chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 10.3 If a poll is duly demanded it shall be taken in such a manner and either at once or after an interval or adjournment or otherwise as the Chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith.
- 10.4 In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting shall be entitled to a second or casting vote.
- 10.5 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 or a proxy, attorney or Member's Representative shall have one vote and, on a poll every person present who is a Member or proxy, attorney or Member's Representative shall have one vote.
- 10.6 No Member is entitled to vote at any general meeting if its annual levy is more than one month in arrears at the date of the meeting.
- 10.7 The instrument appointing a proxy shall be in writing under seal or under the hand of an officer or attorney duly authorised. 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 in favour of or against any proposed resolution. Unless otherwise instructed the proxy may vote as he or she thinks fit.
- 10.8 The instrument appointing a proxy may be in the following form or in such other form as may be specified by the Board from time to time.

<p>..... of</p> <p>being a Member of the FINANCIAL SERVICES COUNCIL LIMITED appoints</p> <p>.....of.....</p>
<p>or failing him or her</p> <p>.....of.....</p>
<p>as my proxy to vote for me on my behalf at the (annual/extraordinary) as the case may be, general meeting of the Company, to be held on the day of 20... and at any adjournment thereof. My proxy is hereby authorised to vote +in favour of/+against the following resolutions:</p> <p style="text-align: right;">+ Delete whichever is not desired.</p>
<p>Signed this day of.....20.....</p>
<p>NOTE: If the Member wishes to vote for or against any resolution it shall instruct its proxy accordingly. Unless otherwise instructed, the proxy may vote as he or she thinks fit.</p>

10.9 The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a copy of that power or authority certified by a notary public or a solicitor must be deposited at the registered office of the Company or at such other place as is specified for that purpose in the notice convening the meeting, not less than 24 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid, provided that the Board may in its discretion waive any one or more of such requirements as to lodgement of the instrument of proxy.

11.0 THE BOARD AND OFFICE BEARERS - CONSTITUTION AND APPOINTMENT

11.1 (a) A Full Member may authorise a specified person to stand for election as a member of the Board.

(b) No Supporting Member, Associate Member, Additional Category Member¹⁵ or Honorary Member is eligible to stand for election to the Board and all references contained elsewhere in this Constitution to eligibility for or nomination or election to the Board refer to the eligibility, nomination or election of a Full Member.

11.2 Until such time as is determined otherwise by ordinary resolution of the Company passed at a general meeting the Board shall consist of not more than 14 directors, made up as follows:

(a) at least nine but not more than twelve members or representatives of Members of the Company (**'Elected Members of the Board'**) elected in accordance with this Constitution; and

¹⁵ Inserted by Special Resolution at 2017 Annual General Meeting on 1 November 2017

- (b) up to two additional persons seconded to the Board by the Elected Members of the Board (**'Appointed Members of the Board'**).
- 11.3 (a) Unless the Board determines otherwise, no Member shall be entitled to have more than one employee or nominee of that Member occupying the office of Director.
- (b) For the purposes of **Clause 11.3(a)**, Members which are related bodies corporate (which expression shall have the meaning given to that term by sections 9 and 50 of the *Corporations Act 2001*) shall be treated as one Member.
- (c) The Board shall determine and implement any necessary or desirable procedure for enforcing the restriction contained in **Clause 11.3(a)**.
- 11.4 At each annual general meeting of the Company, one-third of the Elected Members of the Board or, if their number is not a multiple of three, then the number nearest to but not more than one-third of the Elected Members of the Board must retire from office.
- 11.5 (a) The directors to retire by rotation at an annual general meeting are those directors who have been longest in office since their last election.
- (b) Directors elected on the same day may agree among themselves or determine by lot which of them must retire.
- 11.6 A retiring Director will be eligible for re-election
- 11.7 The election of Elected Members of the Board shall take place in the following manner:
- (a) Either the Board or any two Full Members of the Company shall be at liberty to nominate any Member or representative or nominee of a Member to serve as a member of the Board.
- (aa) A notification must be sent by the Secretary to Full Members inviting nominations for election as a member of the Board at least 56 days before the annual general meeting at which the election is to take place¹⁶.
- (b) The nomination, which shall be in writing and signed by the candidate and the Members proposing the candidate, must be lodged with the Secretary at least 42 days before the annual general meeting at which the election is to take place, or such shorter period as the Board may determine.
- (c) Balloting lists shall be prepared (if necessary) containing the names of the candidates in alphabetical order, and each Member present at the annual general meeting shall be entitled to vote for any number of such candidates not exceeding the number of vacancies.
- 11.8 Subject to the approval of the Board, the immediate past chairman will be an *ex officio*¹⁷ member of the Board for a period of 12 months. The past chairman does not have a vote and is not eligible to count towards a quorum under **Clause 15.4** or to be one of the office bearers.
- 11.9 The Board shall have power at any time, and from time to time, to appoint any Member or a representative of a member to the Board, either to fill a casual vacancy or as an addition to the existing members of the Board but so that the total number of members of the Board shall not at any time exceed the number fixed in accordance with this

¹⁶ Inserted by special resolution at 2010 Annual General Meeting on 27 October 2010.

¹⁷ Inserted by Special Resolution at 2017 Annual General Meeting on 1 November 2017

Constitution. Any member of the Board so appointed shall hold office only until the next following annual general meeting.

- 11.10 The Appointed Members of the Board shall be appointed by the Board from time to time.
- 11.11 Subject to **Clause 12**, the Appointed Members of the Board will hold office from the date of their appointment until the first Board meeting occurring after the second anniversary of their appointment. They will be eligible for re-appointment as Appointed Members of the Board, provided that:
- (a) no person may remain in office as an Appointed Member of the Board for longer than four consecutive years; and
 - (b) the person will not be eligible for re-appointment as an Appointed Member of the Board if he or she has served as an Elected Member of the Board for more than two years.
- 11.12 Unless also occupying the office of director, the Chief Executive Officer and the Secretary will not be members of the Board.
- 11.13 The office-bearers of the Company shall consist of a Chairman and two Deputy Chairmen, each of whom shall be elected by the Board.^{18,19}
- 11.14 Each person elected as an office-bearer shall hold office from the date of his or her election until the earliest to occur of the following:
- (a) the annual general meeting next occurring after his or her election as an office bearer; or
 - (b) his or her resigning from the office held; and
 - (c) in the case of the Chairman or either of the Deputy Chairmen, his or her ceasing to be an Elected Member of the Board.
- 11.15 The election of office bearers shall take place at the first meeting of the Board held after the annual general meeting in each year, and will be conducted in such manner as the Board may determine.

12.0 REMOVAL OF DIRECTORS

- 12.1 The Company may, by ordinary resolution of which special notice has been given, remove any member of the Board before the expiration of his or her period of office and may, by an ordinary resolution, appoint another person in his or her stead. The person so appointed shall hold office only until the next following annual general meeting.
- 12.2 The office of a member of the Board shall become vacant if that Board member:
- (a) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
 - (b) becomes prohibited from being a director of the Company by reason of any order made under the *Corporations Act 2001*;

¹⁸ Inserted by Special Resolution at the 2014 Annual General Meeting held on 29 October 2014.

¹⁹ Deleted by special resolution at the 2014 Annual General Meeting on 29 October 2014.

- (c) ceases to be a member of the Board by operation of section 228 of the *Corporations Act 2001*;
- (d) becomes unsound of mind or is liable to be dealt with in any way under the law relating to mental health;
- (e) resigns his or her office by notice in writing to the Company;
- (f) is absent without permission of the Board from three consecutive meetings of the Board;
- (g) ceases to be a Member's Nominee or a representative as a result of termination of that person's association with the Member; or
- (h) is the Member's Nominee or a representative of a Member which resigns its membership of the Company or otherwise ceases to be a Member of the Company.

13.0 REMUNERATION OF DIRECTORS

- 13.1 If a Director is required to perform services for the Company which in the opinion of the Directors are outside the scope of the ordinary duties of a Director, the Company may pay the Director a fixed sum determined by the Directors.
- 13.2 If the Board so determines, the Directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or otherwise in connection with the Company's business.
- 13.3 To the extent permitted by law the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been a Director of the Company against a liability incurred by the person in the person's capacity as a Director of the Company or in the course of acting in connection with the affairs of the Company or otherwise arising out of the Director holding such office.

14.0 POWERS AND DUTIES OF THE BOARD

- 14.1 The business of the Company shall be managed by the Board which may exercise all powers of the Company as are not, by the *Corporations Act 2001* or by this Constitution, required to be exercised by the Company in general meeting.
- 14.2 The Board may exercise all the powers of the Company to borrow money and to mortgage or charge its property, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt, liability, or obligation of the Company.
- 14.3 The Board shall cause minutes to be made of:
 - (a) all appointments of officers;
 - (b) names of members of the Board present at all meetings of the Company and of the Board; and
 - (c) proceedings at all meetings of the Company and of the Board. Such minutes shall be signed by the Chairman of the meeting at which the proceedings were held or by the Chairman of the next succeeding meeting.

15.0 PROCEEDINGS OF THE BOARD

- 15.1 The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A member of the Board may at any time, and the Secretary shall on the requisition of a member of the Board, summon a meeting of the Board.
- 15.2 Seven days' notice²⁰ of a meeting of the Board or such shorter period as the Chairman may determine will be given to each member of the Board.
- 15.3 Subject to this Constitution questions arising at any meeting of the Board shall be decided by a majority of votes of directors present, and shall for all purposes be deemed a determination of the Board. In case of an equality of votes the Chairman of the meeting shall have a second or casting vote.
- 15.4 The quorum necessary for the transaction of the business of the Board shall be five directors or such greater number as may be fixed by the Board from time to time.
- 15.5 The continuing members of the Board 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 member or members may act for the purpose of increasing the number of members of the Board to that number or of summoning a general meeting of the Company, but for no other purpose.
- 15.6 The Chairman shall preside as chairman at every meeting of the Board, or if there is no Chairman, or if at any meeting the Chairman is not present within ten minutes after the time appointed for holding the meeting, one of the Deputy Chairmen shall be chairman or if either Deputy Chairman is not present at the meeting then the members may choose one of their number to be chairman of the meeting.
- 15.7 The Board may delegate any of its powers and or functions to one or more committees consisting of, subject to Clause 15.7A²¹, such director or directors of the Board or such office-bearer or office-bearers of the Company or such Member or Members of the Company or such representative or representatives of Members as the Board thinks fit. Any committees so formed shall conform to any regulation that may be imposed by the Board.
- 15.7A For so long as the Board has delegated any of its powers and or functions to a Standards, Oversight & Disciplinary Board Committee (or any other committee with a similar role to a Standards, Oversight & Disciplinary Board Committee) ('SODC') in accordance with **Clause 15.7**, the Chairman of the SODC must not be an office-bearer or representative of a Member and must be determined by the Board to be Independent. The terms of appointment for any Chairman of the SODC (including their remuneration and their appointment and cessation as Chairman of the SODC) will be determined by the Board and may be documented in any charter or terms of reference adopted by the Board for the SODC.²²
- 15.8 The Board may appoint one or more advisory boards consisting of such Members or representatives of Members as the Board thinks fit. Such advisory boards shall act in an

²⁰ Inserted by Special Resolution at 2017 Annual General Meeting on 1 November 2017

²¹ Inserted by Special Resolution at 2019 Annual General Meeting on 18 October 2019

²² Inserted by Special Resolution at 2019 Annual General Meeting on 18 October 2019

advisory capacity only. They shall conform to any rules regulations or by-laws that may be imposed by the Board.

- 15.9 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the Members present, each of whom shall have one vote, and in the case of an equality of votes the Chairman of the committee will have a second or casting vote.
- 15.10 All acts done by any meeting of the Board or of a Committee by any person acting as a member of the Board shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such member of the Board or person acting as aforesaid, be as valid as if every person had been duly appointed and was qualified to be a member of the Board.
- 15.11 A resolution in writing signed by a simple majority of members of the Board for the time being entitled to vote on the resolution, shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held; provided that the resolution has been circulated to all members of the Board entitled to vote.²³ Any such resolution may consist of several documents in like form each signed by one or more members of the Board.
- 15.12 For the purposes of this Constitution, a meeting of the Board means:
- (a) a meeting of the members of the Board assembled in person on the same day at the same time and place; or
 - (b) the members of the Board communicating with each other by any technological means by which they are able to simultaneously hear each other and participate in discussion notwithstanding they (or one or more of them) are not physically present in the same place; and
 - (c) a member of the Board participating in the meeting under paragraph (b) is deemed to be present (including for the purpose of constituting a quorum) and entitled to vote at the meeting.
- 15.13 **Clauses 15.11 and 15.12** apply²⁴ to all committees, as if all members of the committee were members of the Board.

16.0 DIRECTORS' INTERESTS

- 16.1 A Director who has a material personal interest in a matter that is to be considered at a meeting of Directors must not:
- (a) vote on the matter or be present while the matter is being considered at the meeting; and
 - (b) be counted in the quorum in relation to that matter, if to do so would be contrary to the *Corporations Act 2001*.
- 16.2 Each Director must disclose to the Company particulars of:

²³ Inserted by Special Resolution at the Extraordinary General Meeting held on 22 May 2018

²⁴ Inserted by Special Resolution at the Extraordinary General Meeting held on 22 May 2018

- (a) any material contract in which the Director is interested, including the names of the parties to the contract, particulars of the contract, and the Director's interest in the contract; and
 - (b) any material personal interest in a matter that is being considered at a meeting of the board or of Directors.
- 16.3 Notwithstanding any rule of law or equity to the contrary, a contract or arrangement in which a Director has an interest is not rendered void or voidable by any of the following:
- (a) voting by the Director contrary to this **Clause 16**;
 - (b) failure by the Director to make disclosure under this **Clause 16**; or
 - (c) the fact that the Director has an interest in the contract or arrangement.
- 16.4 A Director and any firm, body or entity in which a Director has a direct or indirect interest may in any capacity:
- (a) enter into any contract or arrangement with the Company;
 - (b) be appointed to and hold any office or place of profit under the Company, other than the office of auditor; and
 - (c) act in a professional capacity, other than as auditor, for the Company,
- and provided that the Director makes disclosure as required by this **Clause 16**, may receive and retain for the Director's own benefit any remuneration, profits or benefits as if the Director was not a Director.

17.0 ALTERNATE DIRECTORS

- 17.1 A Director may, with the approval of the Directors, appoint any person as the Director's alternate.
- 17.2 An Alternate Director is entitled to notice of Directors' meetings while the Alternate Director is acting in that capacity and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.
- 17.3 An Alternate Director is an officer of the Company and is not an agent of the appointor.
- 17.4 The provisions of this Constitution which apply to Directors also apply to Alternate Directors, except that Alternate Directors are not entitled in that capacity to any remuneration from the Company.
- 17.5 (a) The appointment of an Alternate Director may be revoked at any time by the appointor or by the other Directors.
- (b) An Alternate Director's appointment ends automatically when the Alternate Director's appointor ceases to be a Director.
- 17.6 Any appointment or revocation under this Clause must be effected by written notice delivered to the Company Secretary.
- 17.7 For the purposes of **Clause 16**, an Alternate Director does not have an interest in a contract or arrangement or a material personal interest in a matter by reason only of the fact that the Alternate Director's appointor has such an interest.

18.0 NOMINATIONS COMMITTEE

18.1 There shall be a committee of the Board known as the Nominations Committee.

18.2 The role of the Nominations Committee shall be to:

- (a) encourage nominations to help the Board reflect fully the diversity of the Members;
- (b) nominate candidates for the Board under Clause 11.7(a);
- (c) nominate candidates for the Board under Clause 11.9; and
- (d) any other role provided for in the Committee's Terms of Reference.

18.3 The Nominations Committee and each person appointed to the Committee shall in the exercise of the powers and discretions delegated, comply with the Terms of Reference approved by the Board from time to time.

18.4 The Terms of Reference of the Nominations Committee shall be provided to any Member of the Company or Member's representative on request.

19.0 CHIEF EXECUTIVE OFFICER

19.1 The Board may confer on any person appointed by the Board to the position of Chief Executive Officer any powers exercisable by the Board, subject to any terms and restrictions determined by the Board.

19.2 Any power conferred pursuant to this Clause may be concurrent with but not to the exclusion of the Directors' powers.

19.3 The Board may at any time withdraw or vary any of the powers conferred on the Chief Executive Officer.

20.0 SECRETARY

20.1 There must be at least one secretary of the Company appointed by the Board on conditions determined by the Board.

20.2 The Board may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

21.0 SEAL

21.1 The Board must provide for the safe custody of the seal which may only be used by the authority of the Board or of a committee of the Board authorised by the Board.

21.2 Every instrument to which the seal is affixed must be signed by a member of the Board and countersigned by the Secretary or by a second member of the Board or by some other person appointed by the Board for that purpose.

22.0 ACCOUNTS

22.1 The Board must cause the company to keep proper accounting records and to prepare financial statements and reports in accordance with the requirements of the *Corporations Act 2001*.

22.2 The Board must cause the accounting records and financial statements of the company to be audited in accordance with the requirements of the *Corporations Act 2001*.

23.0 NOTICES

23.1 A notice may be given by the Company to any Member either by serving it on the Member personally or by sending it by post, email, facsimile or other electronic transmission to the Member at its address as shown in the Register or the address supplied by it to the Company for the giving of notices to it.

23.2 Where a notice is sent by post, service of the notice is deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and the notice is deemed to have been served on the day after the date of its posting.

23.3 Where a notice is sent by e-mail, facsimile or other electronic transmission, service of the notice is deemed to be effected by properly addressing the e-mail, facsimile or other electronic transmission and sending it, and the notice is deemed to have been served on the day following its despatch.

23.4 Notice of every general meeting must be given in a manner authorised by **Clause 23.1** and in accordance with the law to every Member and the auditor or auditors for the time being of the Company. No other person shall be entitled to receive notices of general meetings.

24.0 INDEMNITY

24.1 To the extent permitted by law, the Company indemnifies every person who is or has been an officer of the Company against any liability incurred by that person as an officer of the Company unless the liability arises out of conduct on the part of the officer which involves a lack of good faith or is contrary to the Company's express instructions.

24.2 The Company indemnifies every officer of the Company against any liability for costs and expenses incurred by the person in his or her capacity as officer of the Company:

- (a) in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the *Corporations Act 2001*.

24.3 For the purposes of this clause, 'officer' means a member of the Board as defined in this Constitution or an executive officer as defined by the *Corporations Act 2001*.

25.0 NOT FOR PROFIT

25.1 The Company's income and property must be applied solely towards promoting the Company's objects.

25.2 No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, or other profit distribution, to any member.²⁵

²⁵ Inserted by Special Resolution at 2016 Annual General Meeting on 31 October 2016.

26.0 MEMBER LIABILITY AND GUARANTEE

- 26.1 The liability of the Members is limited to the amount of the guarantee given in clause 26.2.
- 26.2 Every Member of the Company undertakes to contribute to the property of the Company in the event of the Company being wound up while it is a Member or within one year after it ceases to be a Member for payment of the debts and liabilities of the Company (contracted before it ceased to be a Member) and for the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding \$100.²⁶

27.0 WINDING UP

- 27.1 If, on the winding up or dissolution of the Company, any property remains after satisfaction of all its debts and liabilities, this property must only be given or transferred to an institution:
- (a) that has the same or similar objects to the objects of the Company; and
 - (b) whose constitution prohibits distributions or payments to its members (if any) to an extent at least as great as is outlined in clause 25.
- 27.2 The identity of the institution referred to in clause 27.1 must be decided by the Members (of all classes of membership) by ordinary resolution at or before the time of winding up of the Company and, if such Members do not decide, by the Supreme Court of the state or territory in which the Company is registered.²⁷

DATED: 18 October 2019

²⁶ Inserted by Special Resolution at 2016 Annual General Meeting on 31 October 2016.

²⁷ Inserted by Special Resolution at 2016 Annual General Meeting on 31 October 2016.

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