

**Corporations Act 2001 (Cth)**

**A public company limited by guarantee taken to be registered in the Australian Capital Territory**

**GREEN BUILDING COUNCIL OF AUSTRALIA  
ACN 100 789 937  
(Company)**

## **CONSTITUTION**

(Adopted on incorporation of the Company on 5 June 2002. Amended 29 September 2004, 15 November 2006, 21 November 2007, 26 November 2008, 29 November 2010, 30 November 2011 and 23 July 2012)

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## TABLE OF CONTENTS

---

**Page No.**

<b>1. GENERAL</b>	<b>1</b>
1.1 Definitions	1
1.2 Interpretation	2
1.3 Replaceable rules	2
1.4 Actions authorised under the Act	2
<b>2. NAME AND OBJECTS</b>	<b>2</b>
2.1 Name of the Council	2
2.2 Objects of the Council	2
<b>3. LIABILITY OF MEMBERS</b>	<b>3</b>
3.1 Limited liability	3
3.2 Limit on Members' undertaking to contribute in the event of winding up	3
<b>4. APPLICATION OF INCOME AND PROPERTY</b>	<b>4</b>
4.1 Income and property to be applied for promotion of objects	4
4.2 Prohibition on dividends and distributions	4
4.3 Permitted payments to officers, members and employees	4
4.4 Approval of payments to Directors	4
<b>5. APPLICATION OF SURPLUS ON WINDING UP</b>	<b>4</b>
5.1 Distribution of Surplus Property	4
5.2 Determination of members regarding distribution of Surplus Property	4
5.3 Determination of Directors regarding Surplus Property	5
<b>6. MEMBERSHIP</b>	<b>5</b>
6.1 Maximum number of members	5
6.2 Membership Groups	5
6.3 Conditions governing membership	6
6.4 Application for membership	7
6.5 Entry of candidate's name on Register	7
6.6 Annual subscription fee and other fees	7
6.7 Resignation of membership	7
6.8 Termination of membership	8
6.9 Member entitled to due process	8
6.10 Effect of termination on fees due and payable	8
<b>7. GENERAL MEETINGS</b>	<b>8</b>
7.1 Power to convene	8
7.2 Notice of general meetings	9
7.3 Business of general meetings	9
7.4 Quorum	9
7.5 If quorum not present	9
7.6 Departure of members so that there is no longer a quorum	10
7.7 Chairperson of general meetings	10
7.8 Adjournments	10
7.9 Voting at general meetings	11
7.10 Procedure for polls	11
7.11 No casting vote for Chairperson	11
7.12 Representation and voting of members	11
7.13 Proxies	12
7.14 Right of officers and advisers to attend general meeting	12
7.15 Circulating resolutions	12

## TABLE OF CONTENTS

---

*Page No.*

<b>8. DIRECTORS</b>	<b>12</b>
8.1 Interpretation	12
8.2 Composition of Board	13
8.3 Director Candidate List	13
8.4 Election of Directors by members	13
8.5 Appointment of Directors by the Board	14
8.6 Term of Directors elected to fill casual vacancy	14
8.7 Removal of Directors	14
8.8 Retirement of Directors	14
8.9 Vacation of office	15
<b>9. POWERS AND DUTIES OF BOARD</b>	<b>16</b>
9.1 Powers of Board	16
9.2 Appointment of attorneys	16
9.3 Negotiable instruments	16
<b>10. PROCEEDINGS OF BOARD</b>	<b>16</b>
10.1 Number of Board Meetings	16
10.2 Convening Board Meetings	16
10.3 Meetings by technology	17
10.4 Holding of Board Meetings using technology	17
10.5 Quorum at meetings	17
10.6 Chairperson and Deputy-Chairperson	17
10.7 Proceedings at meetings	18
10.8 Disclosure of interests	18
10.9 Alternate Directors	19
10.10 Committees	19
10.11 Written resolutions of Directors	19
10.12 Defects in appointments	20
<b>11. MINUTES</b>	<b>20</b>
11.1 Minutes to be kept	20
11.2 Copies of minutes shall be forwarded to the Secretary	21
<b>12. SECRETARIES AND OTHER OFFICERS</b>	<b>21</b>
12.1 Secretaries	21
12.2 Other officers	21
<b>13. SEAL AND EXECUTING DOCUMENTS</b>	<b>21</b>
<b>14. INSPECTION OF RECORDS, ACCOUNTS AND AUDIT</b>	<b>22</b>
14.1 Inspection of records	22
14.2 Accounts	22
14.3 Audit	22
<b>15. NOTICES</b>	<b>22</b>
15.1 Notices generally	22
15.2 Notices of general meeting	23
<b>16. INDEMNITY AND INSURANCE</b>	<b>23</b>
16.1 Indemnification of Directors and Secretary	23
16.2 Indemnification for legal costs	24
16.3 Loans or advances for legal costs	24
16.4 Insurance for officers and auditor	24

## TABLE OF CONTENTS

---

	<i>Page No.</i>	
16.5	Limitation on Council's obligation to indemnify	24
16.6	Council may enter into document for indemnity and insurance policy	25
16.7	Term of indemnity	25
<b>17.</b>	<b>CHIEF EXECUTIVE</b>	<b>25</b>
17.1	Appointment	25
17.2	Remuneration	25
17.3	Powers	25

*Corporations Act 2001 (Cth)*

A public company limited by guarantee

taken to be registered in the Australian Capital Territory

**CONSTITUTION**

of

**GREEN BUILDING COUNCIL**

**OF AUSTRALIA**

**ACN 100 789 937**

**1. GENERAL**

**1.1 Definitions**

The following definitions apply in this Constitution unless the context otherwise requires.

**Act** means the *Corporations Act 2001* and the *Corporations Regulations 2001*.

**Board** means the board of Directors of the Council.

**Chairperson** means the chairperson of the Board appointed pursuant to rule 10.6.

**Code of Conduct** means a code of conduct for members in relation to matters concerning the Council and which has been formulated or modified by the Board from time to time.

**Council** means Green Building Council of Australia ACN 100 789 937 a public company limited by guarantee taken to be registered in the Australian Capital Territory.

**Deputy-Chairperson** means the deputy-chairperson of the Board appointed pursuant to rule 10.6.

**Director** means a director of the Council.

**Independent Director** means a Director who is not formally affiliated or associated with any Membership Group.

**Member Present** means, in connection with a meeting, the member present in person, by corporate representative or by proxy (but not by attorney) at the meeting and who is entitled to vote.

**Membership Committee** means the committee dealing with membership matters and established by the Board under rule 10.10.

**Membership Group** has the meaning given in rule 6.2.

**Register** means a register of members of the Council.

**Seal** means the common seal of the Council.

**Secretary** means a secretary of the Council from time to time.

**Surplus Property** has the meaning given in rule 5.1.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) The **singular** includes the plural and conversely.
- (b) Where a **word** or **phrase** is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a **paragraph** or **sub-paragraph** is to a paragraph or sub-paragraph, as the case may be, of the rule or paragraph, respectively, in which the reference appears.
- (d) A reference to any **legislation** or to any **provision** of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (e) Except in so far as a contrary intention appears in this Constitution, an expression has, in a provision of this Constitution which relates to a particular provision of the Act, the same meaning as in that provision of the Act.
- (f) A mention of anything after **include**, **includes** or **including** does not limit what else might be included.

## 1.3 Replaceable rules

The replaceable rules contained in the Act do not apply to the Council.

## 1.4 Actions authorised under the Act

Where the Act authorises or permits a company to do any matter or thing if so authorised by its Constitution, the Council is and shall be taken by this rule to be authorised or permitted to do that matter or thing, despite any other provision of this Constitution.

## 2. NAME AND OBJECTS

### 2.1 Name of the Council

The name of the Council is "Green Building Council of Australia".

### 2.2 Objects of the Council

The objects for which the Council is established are:

- (a) to promote the planning, design, construction and use of buildings, communities and other infrastructure that are environmentally responsible, sustainable, efficient, profitable and healthy places to live and work;

- (b) to foster a closer association between people in the building industry and other sectors who are involved in the construction, use and promotion of responsible and sustainable buildings and communities;
- (c) to be Australia's principal coalition of leaders involved in promoting responsible and sustainable buildings and communities;
- (d) to encourage the dissemination and development of knowledge regarding responsible and sustainable building practices in the building and related industries;
- (e) to campaign for the wider recognition of responsible and sustainable buildings and communities, and lead market transformation of the building industry;
- (f) to publicise responsible and sustainable building practices within the building industry and the wider community generally;
- (g) to act as a focal point for information on environmentally responsible and sustainable building to consumers and the building industry;
- (h) to act as lead partner in research projects into environmentally sustainable building and evaluation metrics;
- (i) to support and encourage teaching and research programs aimed at raising the knowledge and skill base of green building practitioners and in particular to actively work to align relevant publicly funded research to the practice/market requirements for innovation and development in green building implementation;
- (j) to participate in public debate on environmental issues within the building industry; and
- (k) to campaign, solicit or otherwise obtain funds to be applied towards the above objects,

whether in Australia or overseas.

***[Amended 29/11/10]***

### **3. LIABILITY OF MEMBERS**

#### **3.1 Limited liability**

The liability of the members is limited.

#### **3.2 Limit on Members' undertaking to contribute in the event of winding up**

Every member of the Council undertakes to contribute to the assets of the Council in the event of its being wound up while the member is a member or within one year afterwards, for the payment of the debts and liabilities of the Council contracted before the member ceases to be a member and the costs, charges and expenses of winding up the Council such amount as may be required but not exceeding \$2.00.

**4. APPLICATION OF INCOME AND PROPERTY**

**4.1 Income and property to be applied for promotion of objects**

The income and property of the Council shall be applied solely towards the promotion of the objects of the Council contained in this Constitution.

**4.2 Prohibition on dividends and distributions**

The Council is prohibited from paying any dividends or otherwise making any distributions to members and from paying fees to the Directors.

**4.3 Permitted payments to officers, members and employees**

Neither rule 4.1 nor rule 4.2 prevents the Council from making payments to any person, including officers, members and employees for:

- (a) reasonable remuneration for services actually rendered to the Council;
- (b) goods delivered to the Council;
- (c) out-of-pocket (including for travel and accommodation) expenses incurred in the performance of a duty to the Council or otherwise on Council business;
- (d) commercially reasonable interest on money lent to the Council; or
- (e) commercially reasonable rent for property leased to the Council.

**4.4 Approval of payments to Directors**

The Directors must approve all payments the Council makes to Directors, including any payments authorised by rule 4.3.

**5. APPLICATION OF SURPLUS ON WINDING UP**

**5.1 Distribution of Surplus Property**

If upon the winding up or dissolution of the Council, after the satisfaction of all its debts and liabilities, there remains any property of the Council ("**Surplus Property**"), such Surplus Property shall not be paid to nor distributed amongst the members but shall be distributed in accordance with rule 5.2 or, if that is not applicable, rule 5.3.

**5.2 Determination of members regarding distribution of Surplus Property**

At or before the winding up or dissolution of the Council, the members may determine that the Surplus Property shall be given or transferred to one or more institutions or entities, provided the institution or entity:

- (a) is connected with the promotion of environmentally responsible buildings;
- (b) has objects similar to those of the Council; and

- (c) prohibits the distribution of its income or property amongst its members to an extent at least as great as imposed under this Constitution.

If there is a determination in accordance with this rule 5.2, the Surplus Property shall be transferred to the institution or entity after the winding up or dissolution of the Council. If there is more than one institution or entity specified in the determination, the Surplus Property shall be transferred in the proportion specified in the determination or, if there is no such proportion specified, then, in proportions as determined by the Directors.

### **5.3 Determination of Directors regarding Surplus Property**

- (a) If there is no determination made in accordance with rule 5.2, the Surplus Property shall be given or transferred to any Australian entity, as determined by the Board, which has substantially similar objects to those of the Council and which prohibits the distribution of its income or property amongst its members to an extent at least as great as imposed under this Constitution, in such manner as the Directors shall determine.
- (b) If and so far as effect cannot be given to this rule 5.3, the Surplus Property shall be applied in Australia to some charitable object.

## **6. MEMBERSHIP**

### **6.1 Maximum number of members**

The total number of members shall not exceed 500 (five hundred) or as determined from time to time by the Directors.

### **6.2 Membership Groups**

- (a) Membership of the Council shall be comprised of representation by entities (other than natural persons or trade associations) connected with the following:
  - (i) building product manufacturers, building controllers and service contractors;
  - (ii) utilities and energy service providers;
  - (iii) building owners;
  - (iv) facility and asset managers;
  - (v) professional services (including but not limited to architects, engineers, accountants, lawyers, real estate agents, property valuers, project managers and environmental services advisory groups);
  - (vi) property developers;
  - (vii) construction companies and sub-contractors;

- (viii) financial institutions (including banks, lenders and insurers);
  - (ix) Federal, State and Local Government;
  - (x) environmental organisations;
  - (xi) universities and technical research institutes; and
  - (xii) professional societies,
- each a "Membership Group".
- (b) The Directors may at any time add or delete from the list of Membership Groups in paragraph (a) and from that time on, each such group shall be or cease to be (as appropriate) a "Membership Group" for the purposes of this Constitution.
  - (c) Each member must, on seeking admission in good faith, nominate to which Membership Group it wishes to belong. The Membership Committee shall decide the Membership Group to which the member is to belong, and the Membership Committee's decision on this matter shall be final and binding.

### 6.3 Conditions governing membership

Subject to rule 6.2, any body corporate or other entity (other than a natural person, industry association) may be admitted as a member of the Council if the body corporate or entity:

- (a) demonstrates to the satisfaction of the Membership Committee sufficient interest, concern and knowledge of the affairs of the Council;
- (b) demonstrates to the satisfaction of the Membership Committee that it is sufficiently connected or affiliated with a Membership Group;
- (c) provides the Membership Committee with any particulars, undertakings or documents the Membership Committee requires;
- (d) is approved by the Membership Committee; and
- (e) agrees to be bound by this Constitution by signing and forwarding an application to the Secretary in the following form:

[name of entity] \_\_\_\_\_

of \_\_\_\_\_

applies to become a member of Green Building Council of Australia and agrees to be bound by the Constitution of the Council and abide by the Code of Conduct attached to this application. [name of entity] consents to its name being entered on the Register.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

**6.4 Application for membership**

- (a) Each application for membership shall be sent to the Secretary and accompanied by a remittance of any entrance fee and any annual or other subscription fees payable, the remittance to be refunded in the event the applicant is not admitted to membership.
- (b) The fees payable pursuant to this rule shall be the amount determined from time to time by the Directors.

**6.5 Entry of candidate's name on Register**

Subject to rule 6.1 and upon compliance with rule 6.4, the Secretary may enter the candidate's name on the Register.

**6.6 Annual subscription fee and other fees**

- (a) The Directors shall determine the amount of fees payable by members, including the annual subscription fee and entrance fee (if any). The fees determined by the Directors may be tiered according to the Membership Groups. The Directors may grant any concession in regard to membership fees that they see fit, including the full or partial waiver of all or any of such fees.
- (b) The Directors shall review the fees payable by members as they consider necessary, but at least once each financial year.
- (c) The annual subscription fee (if any) shall be payable annually in advance on the first day of the month in which each member's membership anniversary falls or on such other day as the Directors determine.
- (d) The entrance fee (if any) shall be payable in accordance with rule 6.4.
- (e) Any other fees shall be payable at the time determined by the Directors, provided that members are given at least two months' prior notice.
- (f) A member who ceases to be a member before any fee becomes due and payable shall not be liable for that fee.
- (g) The Directors may remit the annual subscription fee and other fees, and any arrears thereof, of any member on any grounds they consider appropriate.
- (h) In the event that a member notifies the Board that it wishes to transfer its membership to another entity, the Directors may determine the fees payable by the other entity for membership and in their discretion may grant any concession to such fees that they see fit.

**6.7 Resignation of membership**

A member's resignation shall be in writing and addressed and forwarded to the Secretary.

## **6.8 Termination of membership**

Membership shall cease and the Secretary may remove the member's name from the Register upon the Membership Committee being satisfied that any one of the following has occurred:

- (a) the Directors have passed a resolution expelling the member for actions the Directors determine are prejudicial to the welfare, interest or character of the Council, including wilful breach of this Constitution or the Code of Conduct;
- (b) subject to rule 6.6(g), the member has failed to pay any fees payable by the end of 30 days from the due date of such fee (unless the Membership Committee permits such member's name to remain upon the register); or
- (c) a written resignation from the member has been received by the Secretary.

*[Amended 29/11/10]*

## **6.9 Member entitled to due process**

If a resolution under rule 6.8(a) is proposed in relation to any member, that member is entitled to:

- (a) receive reasonable notice of the resolution and notice of the reason(s) that the resolution is proposed; and
- (b) put their case to the Directors by giving the Secretary a written statement for circulation to the Directors and speaking to the resolution for a reasonable time (which time is to be determined by the Chairperson) at the meeting at which the resolution is considered.

A statement given under paragraph (b) must be circulated to the Directors before the meeting or, if there is insufficient time, read out at the meeting before the resolution is considered, unless the statement is more than 1,000 words long or is considered defamatory by the Chairperson.

## **6.10 Effect of termination on fees due and payable**

Subject to rule 6.6(f), resignation or other termination of a member's membership of the Council will not relieve a member of responsibility for any financial obligations, including fees and other amounts due and payable, accrued up to the effective date of termination.

## **7. GENERAL MEETINGS**

### **7.1 Power to convene**

- (a) An annual general meeting shall be convened in accordance with the Act and any other general meeting shall be convened whenever the Board thinks fit.

- (b) In addition to the circumstances under which the Directors must call a meeting on requisition of the members under the Act, the Directors must call a general meeting within 21 days if a written requisition signed by 10% of the members entitled to vote is received by the Secretary. The requisition must state any resolution to be proposed at the meeting and be signed by the members making the request.
- (c) The Board may cancel by notice in writing to all members any meeting convened by the Board, except that a meeting convened on the requisition of a member or members shall not be cancelled without their consent.
- (d) The Board may, but in the case of a meeting requisitioned by members only with their written consent, postpone a general meeting or change the place at which it is to be held by notice, not later than 72 (seventy-two) hours prior to the time of the meeting, to all persons to whom the notice of meeting (the **first notice**) was given. The postponing notice shall specify the place, date and time of the meeting. The meeting shall be taken to have been duly convened under the first notice.

## **7.2 Notice of general meetings**

- (a) Each notice convening a general meeting shall contain the information required by the Act.
- (b) The non-receipt of a notice convening a general meeting by or the accidental omission to give notice to any person entitled to receive notice shall not invalidate the proceedings or any resolution passed at the meeting.
- (c) Notice convening a general meeting may be given either personally, by post, courier, facsimile, email or any other form of wire or wireless communication. A notice of meeting sent by post is taken to be delivered on the business day after it is posted. A notice of meeting sent by facsimile or other electronic means is taken to be received on the business day that it is sent.

## **7.3 Business of general meetings**

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

## **7.4 Quorum**

A quorum for a General Meeting shall be constituted by 20 Members Present.

***[Amended 26/11/08]***

## **7.5 If quorum not present**

If a quorum is not present within 20 (twenty) minutes after the time appointed for the meeting:

- (a) where the meeting was convened on the requisition of members, the proposed meeting shall be dissolved (subject to rule 7.1(a)); and

- (b) in any other case:
  - (i) the meeting stands adjourned to a day and at a time and place as the Board decide or, if no decision is made by the Board, to the same day in the next week at the same time and place; and
  - (ii) if at the adjourned meeting a quorum is not present within 20 (twenty) minutes after the time appointed for the meeting, the meeting shall be dissolved.

#### **7.6 Departure of members so that there is no longer a quorum**

If a quorum is present at the time appointed for the meeting (or within 20 minutes after the time appointed) but enough members depart so that there is no longer a quorum, the Members Present may adjourn the meeting until a quorum is present, at which time any business may be transacted that would have been transacted at the meeting as originally called.

#### **7.7 Chairperson of general meetings**

- (a) Subject to paragraph (b), the Chairperson shall preside as Chairperson at every general meeting.
- (b) Where a general meeting is held and:
  - (i) there is no Chairperson; or
  - (ii) the Chairperson is not present within 15 (fifteen) minutes after the time appointed for the meeting or does not wish to act as Chairperson of the meeting,

the Deputy-Chairperson (if any) must act as the Chairperson of the meeting. If there is no Deputy-Chairperson, or that person is absent or does not wish to act as Chairperson of the meeting, the Directors present shall choose one of their number or, in the absence of all Directors or if none of the Directors present wish to act, the Members Present shall elect one of their number to be Chairperson of the meeting.

#### **7.8 Adjournments**

- (a) The Chairperson may and shall if so directed by the meeting adjourn the meeting from time to time and from place to place.
- (b) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for 30 (thirty) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (d) Except as provided by paragraph (c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

**7.9 Voting at general meetings**

- (a) Any resolution to be considered at a meeting shall be decided on a show of hands unless a poll is demanded.
- (b) A declaration by the Chairperson that a resolution has on a show of hands been carried or lost and an entry to that effect in the minutes of the meeting shall be taken as conclusive evidence of the fact without the need to show the number or proportion of the votes recorded in favour of or against the resolution.
- (c) Despite the Act, a poll for a resolution may be demanded by the Chairperson or by at least 2 (two) Members Present and entitled to vote on the resolution. A demand for a poll may be withdrawn.

**7.10 Procedure for polls**

- (a) Subject to this rule, a poll when demanded in accordance with this Constitution shall be taken in the manner and at the time the chairperson directs.
- (b) A poll may be demanded before a vote is taken, before the voting results on a show of hands are declared or immediately after the voting results on a show of hands are declared.
- (c) The result of the poll shall be a resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll shall not prevent a meeting from continuing with the transaction of any business other than that on which a poll has been demanded.

**7.11 No casting vote for Chairperson**

In the event of an equality of votes on a show of hands or on a poll the Chairperson of the meeting shall not have a casting vote in addition to any vote to which the Chairperson may be entitled as a member.

**7.12 Representation and voting of members**

- (a) Members shall have the right to attend and vote at meetings of members, provided they have paid all fees due and payable at the date of the notice of meeting on or before the date of the meeting.
- (b) Subject to this Constitution:
  - (i) at meetings of members each member entitled to attend and vote may attend and vote in person or by proxy;
  - (ii) on a show of hands, every Member Present having the right to vote at the meeting has one vote; and
  - (iii) on a poll, every Member Present having the right to vote at the meeting has one vote.

**7.13 Proxies**

- (a) A member may appoint a proxy. A proxy need not be a member.
- (b) An instrument appointing a proxy must be in writing under the hand of the appointor (not by an attorney).
- (c) A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
- (d) A proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting, unless the member directs otherwise.
- (e) An instrument appointing a proxy shall be in any form that the Board may accept or stipulate.
- (f) The documents to be received under the Act for an appointment of a proxy to be effective may be received by the Council at any time before the meeting commences or resumes (as the case may be).

**7.14 Right of officers and advisers to attend general meeting**

- (a) A Director shall be entitled to be present and to speak at any general meeting.
- (b) An auditor shall be entitled to be present and to speak at any general meeting.
- (c) A Secretary shall be entitled to be present and, at the request of the Chairperson, to speak at any general meeting.
- (d) Any other person (whether a member or not) requested by the Board to attend any general meeting shall be entitled to be present and, at the request of the Chairperson, to speak at that general meeting.

**7.15 Circulating resolutions**

Nothing in this Constitution limits the Council's power under the Act to pass a resolution as a circulating resolution, including a resolution circulated by email signifying assent to the resolution.

**8. DIRECTORS**

**8.1 Interpretation**

In this rule 8:

"**Core Director**" means a Director who is not:

- (a) an Independent Director; or
- (b) a Director who holds office by reason of an appointment to fill a casual vacancy.

"Retirement Number" means the greater of:

- (a) zero; and
- (b) the number of Core Directors equal to one-third of the Core Directors, or, if their number is not a multiple of three, then the whole number nearest to and less than one-third of the Core Directors then in office.

*[Amended 29/9/04, 15/11/06, 21/11/07 and 23/7/12]*

## 8.2 Composition of Board

The Board shall from the 2013 Annual General Meeting consist of not less than 5 (five) and not more than 12 (twelve) persons and:

- (a) to the extent possible, shall contain at least one representative from members of each Membership Group;
- (b) if the Board so determines, up to 3 (three) Independent Directors appointed by the Directors; and
- (c) shall, in all cases and at any time, not consist of a number of Directors who are representatives of members from the same Membership Group that is greater than one-quarter of the total number of Directors then in office.

*[Amended 29/9/04, 15/11/06 and 23/7/12]*

## 8.3 Director Candidate List

- (a) The Directors shall call, at least 45 days prior to any Annual General Meeting at which it is proposed that Directors will be elected, for nominations for election as Directors from the members. Nominees shall be included in a list of persons from whom nominations have been received by the Directors (the "**Director Candidate List**"). Each person included on the list must have signed a consent to act as a Director and supplied any other information required by the Board, unless the Directors resolve otherwise.
- (b) The Director Candidate List shall be sent to each member together, subject to rule 8.4, with a ballot paper at least 21 days before the Annual General Meeting if the election of Directors is proposed to occur at that meeting.

*[Amended 29/9/04]*

## 8.4 Election of Directors by members

- (a) Subject to this rule 8.4, rule 8.2(b) and rule 8.5, every candidate for Director shall be elected to office by resolution of members or by ballot of such members, held at each Annual General Meeting.
- (b) In the event that more candidates have been nominated than vacancies exist on the Board, the election of Directors shall take place by way of a resolution of members or by ballot, as determined by the

Board. Subject to rule 8.2(c), in any other case, the nomination of persons under rule 8.3 shall operate as an election of those persons nominated, effective from the close of the next Annual General Meeting.

- (c) There shall be no retirement of Directors under rule 8.8(b) and no election of Directors under this rule 8.4 until the Annual General Meeting to be held in calendar year 2013.

***[Amended 29/9/04, 15/11/06 and 23/7/12]***

#### **8.5 Appointment of Directors by the Board**

- (a) Subject to the Act and this Constitution, the Board may at any time appoint any person:
- (i) as a Director, to fill a casual vacancy; or
  - (ii) as an Independent Director, provided that there may only be a maximum of 3 (three) Independent Directors at any time.
- (b) Unless the number of Directors is or would be less than the minimum number provided by rule 8.2, no casual vacancy is to be filled within 3 (three) months prior to the Council's next Annual General Meeting.

***[Amended 29/9/04, 15/11/06, 29/11/10 and 23/7/12]***

#### **8.6 Term of Directors elected to fill casual vacancy**

A person appointed to fill a casual vacancy remains in office until the next Annual General Meeting, when, subject to this rule 8, such person may be elected for a further term of up to 6 (six) consecutive years from the Annual General Meeting at which they were elected.

***[Amended 29/9/04, 21/11/07 and 23/7/12]***

#### **8.7 Removal of Directors**

Subject to the Act and this Constitution, the Council may at any time by resolution passed in general meeting remove any Director from office.

#### **8.8 Retirement of Directors**

- (a) Subject to rules 8.6 and 8.8(e), no Director (including Independent Director or Director who has served as a chairperson of a Board committee) shall hold office for a period in excess of 7 (seven) consecutive years, or beyond the seventh Annual General Meeting whichever is the longer, following the first to occur of the Director's appointment or election.
- (b) At each Annual General Meeting Core Directors in number equal to the Retirement Number are to retire from office.

- (c) Core Directors to retire under rule 8.8(b) are to be the Core Directors then longest in office since last being elected or re-elected. Between Core Directors who were elected on the same day, the Core Director or Core Director(s) to retire, if they cannot otherwise agree, must be determined by lot.
- (d) A Director who retires from office under rule 8.8(a) is eligible for reappointment at the expiration of 12 (twelve) months after such retirement.
- (e) A Chairperson of the Board of less than 4 (four) consecutive years standing as Chairperson who would otherwise compulsorily retire under this rule 8.8 may seek nomination for an extension of his or her office as Director until a term of no more than 4 (four) consecutive years as Chairperson is completed. Service as Chairperson prior to 23 July 2012 is to be taken into account for the purposes of this rule 8.8(e). Such an extension of office shall be considered and thought fit approved by a resolution of the Board.
- (f) Any period served by a Director as a chairperson of a Board committee before 23 July 2012 will not be taken into account for the purpose of rule 8.8(a).
- (g) All Independent Directors are to retire at the next Board Meeting to occur after the second Annual General Meeting following his or her appointment, at which meeting they will be eligible for re-appointment as an Independent Director under rule 8.5(a)(ii) or, subject to this Constitution, as a Director to fill a casual vacancy under rule 8.5(a)(i). Should an Independent Director be subsequently appointed or elected as a Director, any continuous period served as an Independent Director is to be taken into account for the purpose of rule 8.8(a).
- (h) Subject to this rule 8.8, a retiring Director is eligible for re-election without needing to give any prior notice of his or her intention to submit himself or herself for re-election and acts as Director throughout the meeting at which he or she retires.

***[Amended 29/9/04, 15/11/06,21/11/07 and 23/7/12]***

## **8.9 Vacation of office**

In addition to the circumstances in which the office of a Director (including an Independent Director) becomes vacant either under the Act or because of a resolution under rule 8.8 a Director ceases to be a Director if the Director:

- (a) becomes bankrupt or enters into an assignment for the benefit of creditors;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (c) being a Director nominated by a member, ceases to be affiliated with the member that nominated him or her (unless the Directors agree that the Director may remain a Director until the next Board Meeting);

- (d) resigns by notice in writing to the Secretary or refuses to act;
- (e) is absent without the consent of the Board from 2 (two) consecutive meetings of the Board; or
- (f) dies.

## **9. POWERS AND DUTIES OF BOARD**

### **9.1 Powers of Board**

- (a) Subject to the Act and this Constitution, the business of the Council shall be managed by the Board, who may, subject to any regulations from time to time made by the Council in general meeting, exercise all powers of the Council which are not, by the Act or this Constitution, required to be exercised by the Council in general meeting, provided that no regulations so made shall invalidate any prior act of the Board which would have been valid if such regulation had not been made and provided further that the Board shall not implement a significant departure from the ethos of the Council without the prior approval of the Council in general meeting.
- (b) Without limiting the generality of paragraph (a), the Board may exercise all the powers of the Council to borrow money and to charge any property or business of the Council.

### **9.2 Appointment of attorneys**

The Board may, by power of attorney, appoint any person to be the attorney of the Council for the purposes, with the powers, authorities and discretions vested in or exercisable by the Board as may be specified by them and for such period and subject to such conditions as they think fit.

### **9.3 Negotiable instruments**

All negotiable instruments of the Council shall be executed by the persons and in the manner that the Board decide from time to time.

## **10. PROCEEDINGS OF BOARD**

### **10.1 Number of Board Meetings**

The Board shall meet together for the dispatch of business of the Council at least 6 (six) times in each year including planning days, and may adjourn and otherwise regulate their meetings as they think fit.

***[Amended 23/7/12]***

### **10.2 Convening Board Meetings**

- (a) Any 2 (two) Directors may, at any time, by written notice to the Secretary request that a meeting of the Board be convened. The Secretary shall forthwith convene a meeting in accordance with such a request.

- (b) Reasonable notice must be given to every Director of the place, date and time of every meeting of the Board. Where any Director is for the time being outside of Australia, notice need only be given to that Director if contact details have been given.

### **10.3 Meetings by technology**

- (a) For the purposes of the Act, each Director, on becoming a Director (or on the adoption of this Constitution), consents to the use of the following technology for calling or holding a Board meeting:
  - (i) video;
  - (ii) telephone;
  - (iii) electronic mail;
  - (iv) any other technology which permits each Director to communicate with every other Director; or
  - (v) any combination of the technologies described in the above paragraphs.
- (b) A Director may withdraw the consent given under this rule in accordance with the Act.

### **10.4 Holding of Board Meetings using technology**

Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:

- (a) the participating Directors shall, for the purpose of every provision of this Constitution concerning meetings of the Board, be taken to be assembled together at a meeting and to be present at that meeting; and
- (b) all proceedings of those directors conducted in that manner shall be as valid and effective as if conducted at a meeting at which all of them were present.

### **10.5 Quorum at meetings**

A quorum for a meeting of the Board is the presence of not less than one-third of Directors entitled to vote.

### **10.6 Chairperson and Deputy-Chairperson**

- (a) At their first meeting after the Annual General Meeting in each year the Board shall elect one of their number as their Chairperson until the next Annual General Meeting. The Directors may also elect one of their number as Deputy-Chairperson of their meetings and may determine the period for which the person elected Deputy-Chairperson is to hold office.

- (b) Where a meeting of the Board is held and:
  - (i) a Chairperson has not been elected as provided by paragraph (a); or
  - (ii) the Chairperson is not present at the time appointed for the holding of the meeting or does not wish to chair the meeting,

the Deputy-Chairperson (if any) must act as chairman of the meeting. If there is no Deputy-Chairperson or that person is absent or does not wish to chair the meeting, the Directors present shall elect one of their number to be the Chairperson of the meeting.

#### **10.7 Proceedings at meetings**

- (a) Subject to this Constitution, questions arising at a meeting of the Board shall be decided by a majority of votes of Directors present and voting and any such decision shall for all purposes be taken to be a decision of the Board.
- (b) In the case of an equality of votes, the Chairperson of the meeting has a second or casting vote in addition to the Chairperson's deliberative vote.

#### **10.8 Disclosure of interests**

- (a) A Director is not disqualified by the Director's office from contracting with the Council in any capacity.
- (b) A contract or arrangement made by the Council with a Director or in which a Director is in any way directly or indirectly interested shall not be avoided merely because the Director is a party to or interested in it.
- (c) A Director is not liable to account to the Council for any profit derived in respect of a matter in which the Director has a material personal interest, merely because of the Director's office or the fiduciary relationship it entails, if the Director has:
  - (i) declared the Director's interest in the matter as soon as practicable after the relevant facts have come to the Director's knowledge; and
  - (ii) not contravened this Constitution or the Act in relation to the matter.
- (d) A general notice that the Director is an officer or member of a specified body corporate or firm and stating the nature and extent of the Director's interest in the body corporate or firm shall, in relation to a matter involving the Council and that body corporate or firm, be a sufficient declaration of the Director's interest, provided:
  - (i) the extent of that interest is not materially greater at the time of first consideration of the relevant matter by the Board than was stated in the notice; and

- (ii) the Director has complied with section 192 of the Act.
- (e) A Director may not vote in respect of a matter in which that Director has a material personal interest unless the Director is permitted to do so under the Act.
- (f) If the provisions of this rule and the Act have been observed by any Director with regard to any contract or arrangement in which the Director is in any way interested, the fact that the Director signed the document evidencing the contract or arrangement shall not in any way affect its validity.

**10.9 Alternate Directors**

A Director may not appoint a person to act as an alternate Director in the Director's place.

**10.10 Committees**

- (a) The Board may delegate any of their powers to a committee or committees consisting of such number of them and/or members of the Council or any other person as they think fit. A committee may consist of one or more persons.
- (b) Without limiting paragraph (a), the Board may delegate matters concerning membership to a Membership Committee. If no Membership Committee is established, any function to be performed by such committee under this Constitution, shall be performed by the Board.
- (c) A committee to which any powers have been delegated shall exercise the powers delegated in accordance with any directions of the Board, this Constitution and the Act. A power so exercised shall be taken to have been exercised by the Board.
- (d) The number of members whose presence at a meeting of the committee is necessary to constitute a quorum is the number determined by the Board and, if not so determined, is 2 (two) (except in the case of a committee with one member, in which case the quorum is one). Unless the Board determines otherwise, the quorum need only be present at the time when the meeting proceeds to business.
- (e) Minutes of all the proceedings and decisions of every committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act to be made, entered and signed.

**10.11 Written resolutions of Directors**

- (a) If a document:
  - (i) is sent to all those entitled to receive notice of a meeting at which a resolution could be put;

- (ii) contains a statement that the signatories to it are in favour of that resolution;
- (iii) the terms of the resolution are set out or identified in the document;
- (iv) has been signed by at least one third of the Directors entitled to vote on that resolution; and
- (v) has been signed by all of the Directors entitled to vote on that resolution and situate in Australia,

a resolution in those terms is passed on the day on which and at the time at which the document was signed by such Directors and the document has effect as a minute of the resolution.

(b) For the purposes of paragraph (a):

- (i) "signed" shall include an email from or on behalf of a Director indicating assent to the resolution, provided it reasonably appears to the recipient that the email has been sent by the Director personally or on the Director's instructions;
- (ii) two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be taken to constitute one document containing a statement in those terms signed by those Directors at the time at which the last of those documents to be signed was signed by a Director; and
- (iii) a fax or email which is received by the Council or an agent of the Council and is sent by a Director shall be taken to be signed by that Director not later than the time of receipt of the fax or email by the Council or its agent in legible form.

## **10.12 Defects in appointments**

- (a) All acts done by any meeting of the Board, committees of the Board, or any person acting as a Director are as valid as if each person was duly appointed and qualified to be a Director or a member of the committee.
- (b) Paragraph (a) applies even if it is afterwards discovered that there was some defect in the appointment of a person to be a Director or a member of a committee or to act as a Director or that a person so appointed was disqualified.

## **11. MINUTES**

### **11.1 Minutes to be kept**

The Board shall cause minutes to be duly entered in books provided for the purpose:

- (a) of all appointments of officers;
- (b) of the names of the Directors present at each meeting of the Board and of any committee of the Board;
- (c) of all orders made by the Board and of any committee of the Board; and
- (d) of all resolutions and proceedings of meetings of the Council, of all meetings of the Board of the Council, and of all meetings of any committee of the Board,

and such minutes, if purporting to be signed by the Chairperson of such meeting or by the Chairperson of the next succeeding meeting, shall be receivable as prima facie evidence of the matters stated in such minutes.

**11.2 Copies of minutes shall be forwarded to the Secretary**

Copies of all minutes shall be forwarded to the Secretary as soon as possible.

**12. SECRETARIES AND OTHER OFFICERS**

**12.1 Secretaries**

- (a) The Secretary holds office on the terms and conditions, as to remuneration and otherwise, as the Board decides. A Secretary shall be appointed at the first meeting of Board after a vacancy in that office occurs.
- (b) The Board may at any time terminate the appointment of a Secretary.

**12.2 Other officers**

- (a) The Board may:
  - (i) create any position in the Council with such powers and responsibilities as the Board confers; and
  - (ii) appoint any person, whether or not a Director to a position created under paragraph (a)(i).
- (b) The Board may at any time terminate the appointment of a person holding a position created under paragraph (a)(i) and may also abolish the position.

**13. SEAL AND EXECUTING DOCUMENTS**

- (a) The Council shall have a common seal, which shall be used on all documents that at law must be sealed.
- (b) The Seal shall be used only by the authority of the Board, or of a committee of the Board authorised by the Board to authorise the use of the Seal. Every document to which the Seal is affixed shall be signed by:

- (i) 2 (two) Directors; or
- (ii) a Director and a Secretary.

## **14. INSPECTION OF RECORDS, ACCOUNTS AND AUDIT**

### **14.1 Inspection of records**

- (a) The Board may authorise a member to inspect books of the Council (to the extent, at the time and places and under the conditions the Board considers appropriate).
- (b) A member (other than a Director) does not have the right to inspect any document of the Council except as provided by law or authorised by the Board.

### **14.2 Accounts**

The Board shall:

- (a) cause proper accounts and other records to be kept and audited;
- (b) send members copies of the financial report for the financial year, the Directors' report for the year and the auditor's report on the financial report which shall include a profit and loss statement for the year, a balance sheet as at the end of the year and a statement of cash flows for the year and every document required by law to be attached thereto by the earlier of 21 days before the next Annual General Meeting or 4 (four) months after the end of the financial year; and
- (c) cause to be laid before each Annual General Meeting the financial report, the Directors' report and the auditor's report for the last financial year that ended before the Annual General Meeting;
- (d) send members with the financial report, profit and loss accounts demonstrating the performance of each subsidiary of the Council (if any) for the financial year; and
- (e) send members a half yearly report on the state of affairs of the Council.

### **14.3 Audit**

A properly qualified auditor shall be appointed for the Council to review the financial reports for the financial year in accordance with the Act and to report to the members as required by the Act.

## **15. NOTICES**

### **15.1 Notices generally**

- (a) Any member who has not left at or sent to the registered office a place of address, facsimile number or an email address (for registration in the register) at or to which all notices and documents of the Council may be served or sent shall not be entitled to receive any notice.

- (b) A notice may be given by the Council to any member by:
  - (i) serving it on the member personally;
  - (ii) sending it by post to the member or leaving it at the member's address as shown in the register or the address supplied by the member to the Council for the giving of notices;
  - (iii) fax to the fax number supplied by the member to the Council for the giving of notices; or
  - (iv) transmitting it electronically to the email address given by the member to the Council for the giving of notices.
- (c) Notice to a member whose address for notices is outside Australia shall be sent by airmail, courier, fax or email or any other method which ensures the notice is received within reasonable time.
- (d) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected:
  - (i) in the case of a notice of a meeting, on the day next after the date of its posting; and
  - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (e) Where a notice is sent by fax or electronic transmission, service of the notice shall be taken to be effected by properly addressing and sending or transmitting the notice and to have been effected on the business day after it is sent.

## **15.2 Notices of general meeting**

- (a) Notice of every general meeting shall be given in the manner authorised by rule 15.1:
  - (i) to every member and to each Director; and
  - (ii) to the auditor for the Council.
- (b) Except as required by the Act, no other person is entitled to receive notice of general meetings.

## **16. INDEMNITY AND INSURANCE**

### **16.1 Indemnification of Directors and Secretary**

To the extent permitted by law, the Council must indemnify each person who is, or has been, a Director or Secretary against any liability incurred as a Director or Secretary, except where the liability:

- (a) is owed to the Council or a related body corporate;

- (b) arises out of conduct involving a lack of good faith;
- (c) is for a pecuniary penalty order under section 1317G of the Act;
- (d) is for a compensation order under section 1317H of the Act; or
- (e) is for legal costs.

**16.2 Indemnification for legal costs**

To the extent permitted by law, the Council must indemnify each officer against any liability for legal costs incurred in defending an action for a liability incurred as an officer of the Council, except if the costs are incurred:

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under rule 16.1;
- (b) in defending or resisting criminal proceedings in which the person is found guilty;
- (c) in defending or resisting proceedings brought by the Australian Securities & Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
- (d) in connection with proceedings for relief to the person under the Act in which the court denies the relief.

Paragraph (c) does not apply to costs incurred in responding to actions taken by the Australian Securities & Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order.

**16.3 Loans or advances for legal costs**

The Council may give an officer a loan or advance in respect of legal costs for defending an action for a liability incurred as an officer of the Council, provided that such loan or advance does not contravene the Act.

**16.4 Insurance for officers and auditor**

The Council may pay or agree to pay a premium for a contract insuring a person who is or has been an officer or auditor of the Council against any liability other than:

- (a) one for legal costs;
- (b) conduct involving a wilful breach of duty in relation to the Council; or
- (c) a contravention of section 182 or 183 of the Act.

**16.5 Limitation on Council's obligation to indemnify**

The Council need not indemnify a person as provided for in rule 16.1 or 16.2 in respect of a liability to the extent that the person is entitled to compensation in respect of that liability under a contract of insurance.

**16.6 Council may enter into document for indemnity and insurance policy**

To the extent permitted by law the Council may enter into any:

- (a) documentary indemnity in favour of; or
- (b) insurance policy for the benefit of,

a person who is, or has been, a Director, Secretary, employee or other officer of the Council.

**16.7 Term of indemnity**

The benefit of each indemnity given in rules 16.1 and 16.2 continues, even after its terms or the terms of this paragraph are modified or deleted, in respect of a liability arising out of acts or omissions occurring prior to the modification or deletion.

**17. CHIEF EXECUTIVE**

**17.1 Appointment**

- (a) **(Engagement):** The Directors may at any time engage a person who is to serve as Chief Executive for any period and on any provisions decided by the Directors.
- (b) **(Revocation):** The Directors may at any time revoke any engagement of the Chief Executive, subject to the provisions of any applicable engagement agreement.
- (c) **(Not a Director):** The Chief Executive shall not at any time whilst he or she holds that office serve as a Director.

*[Amended 23/7/12]*

**17.2 Remuneration**

The Directors may at any time decide the remuneration of the Chief Executive, whether by way of salary, commission or participation in profits or any combination of any previously specified method, subject to the provisions of any applicable engagement agreement.

**17.3 Powers**

- (a) **(Delegated powers):** The Directors may confer upon the Chief Executive any powers exercisable by the Directors, subject to any provisions or restrictions decided by the Directors.
- (b) **(Concurrent powers):** Any delegated powers may be concurrent with, or exclude, the powers of the Directors.
- (c) **(Revocation):** The Directors may at any time revoke or vary any delegated powers conferred upon the Chief Executive.

*[Amended 29/9/04 and 15/11/06]*