

**Corporations Act 2001**  
**A Company Limited by Guarantee**

**AUSTRALASIAN RAILWAY ASSOCIATION LIMITED**  
**CONSTITUTION**

**Amended, November 2021**

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## 1. OPERATIVE CLAUSES:

### 1.1. Definitions

In this document, unless the context otherwise requires:

- (a) **“Additional Directors”** means any Director appointed pursuant to clause 9.1(c);
- (b) **“Affiliate”** means a member of the Company under clause 3.5;
- (c) **“Alternate Director”** means a person for the time being holding office as an alternate director of the Company;
- (d) **“Annual General Meeting”** means the annual general meeting of the Company held in accordance with clause 5;
- (e) **“Associate Member”** means an entity that has been granted membership by the Board as an “Associate Member” pursuant to clause 3.3, however an Associate is not a member for the purposes of ss.9 or 231 of the Corporations Act;
- (f) **“Auditor”** means the person or persons appointed as auditor or auditors of the Company pursuant to clause 20.5;
- (g) **“Board”** means the Board of Directors of the Company, for the time being;
- (h) **“Board Themes”** means the priorities for representation (geographic or sector), diversity, experience and skills set by the Nomination and Remuneration Committee each year, having regard to the relevant policies and procedures of the Company from time to time, including any diversity policy or board skills matrix;
- (i) **“Chairperson”** means a person appointed in accordance with clauses 10 and 13.5 to preside over Board meetings, Annual General Meetings and general meetings of the company;
- (j) **“Code of Conduct”** means the code of conduct for Members of the Company, as developed, approved and updated by the Board from time to time.
- (k) **“Company”** means Australasian Railway Association (ARA) Limited;
- (l) **“Corporations Act”** means the *Corporations Act 2001* (Commonwealth), except to the extent of any exemption, modification, declaration or order made in respect of that legislation which applies to the Company;
- (m) **“Directors”** means the directors of the Company for the time being including General and Industry Sector Directors and if the company has only one director, that director;
- (n) **“Financial Year”** means a year commencing on 1 July in any year and ending on 30 June in the following year;
- (o) **“Full Member”** means an entity that has been granted membership by the Board as a “Full Member” pursuant to clause 3.2;
- (p) **“Freight Operations”** means the activities of organisations that primarily operate rail freight services and may include organisations owning, controlling and maintaining the rail network for the purpose of the carriage of bulk or containerised freight;
- (q) **“General Directors”** means a Director appointed pursuant to clause 9.1(b)(i);
- (r) **“General Meeting”** means a general meeting of the Company convened by the Board or the Members (including an Annual General Meeting);

- (s) **“Independent Chairperson”** means the person appointed as an Independent Chairperson in accordance with clauses 10 and 13.5 to preside over Board meetings, General Meetings and Annual General Meetings of the Company;
- (t) **“Industry”** means the rail industry in Australia, including entities involved in passenger operations, freight operations, track and infrastructure owners and managers, manufacturers, suppliers and contractors;
- (u) **“Industry Sector Director”** means a Director appointed pursuant to clause 9.1(b)(ii);
- (v) **“Member”** means an entity for the time being registered under the provisions of this Constitution as a member of the Company, including but not limited to Full Member, Associate Member, Provisional Member and Affiliate;
- (w) **“Network Managers/Owners”** means organisations that own and manage rail network infrastructure and provide access to freight and passenger operators for the running of trains;
- (x) **“Passenger Operations”** means the activities of organisations that primarily operate passenger train services and may include organisations owning, controlling and maintaining the rail network on which the passenger services are operated;
- (y) **“Personal Representative”** means the legal personal representative, executor or administrator of the estate of a deceased person;
- (z) **“Register”** means the register of Members of the Company;
- (aa) **“Provisional Member”** means an entity that has submitted an application to become a Full or Associate Member but whose application has not been considered for approval by the Board;
- (bb) **“Related Company”** means any body corporate which is a related body corporate of the Company under the Corporations Act;
- (cc) **“Secretary”** means a Company Secretary of the Company for the time being;
- (dd) **“Serious Misconduct”** means actual or suspected misconduct, including (but not limited to) any conduct that is or may be construed as:
  - (i) dishonest, fraudulent or criminal;
  - (ii) contrary to law, including breach of directors’ duties under the Corporations Act;
  - (iii) a breach of the applicable policies or procedures of the Company;
  - (iv) a breach of a contract of employment with the Company;
  - (v) a breach of the ARA Board Code of Conduct (if any); or
  - (vi) a risk to the reputation or viability of the Company.
- (ee) **“Subscription”** means the fee that must be paid by a Member, of such an amount and for such period as the Board may determine from time to time, for Members to obtain their membership, or renew their membership, of the Company;
- (ff) **“Subsidiary”** means any company or corporation which is a subsidiary of the Company in accordance with the Corporations Act;
- (gg) **“Suppliers and Contractors”** means entities that manufacture, construct, maintain and/or supply goods and services, equipment and facilities for the rail industry; or are not for profit organisations established to facilitate the provision of services or equipment to the rail industry;

- (hh) **“Technology”** includes all information and communications devices for audio, visual, audio-visual or electronic communication including, but not limited to, radio, telephone, facsimile, closed circuit television, data storage devices, internet communication via an automated or user operated system, electronic mail, automated election processes, direct recording electronic voting systems, or any other electronic means available; and
- (ii) **“Year”** means the calendar year unless designated as the Financial Year.

## 1.2. **Interpretation**

Words or expressions contained in this Constitution will be interpreted in accordance with the provisions of the Corporations Act as in force at the date when such interpretation is required.

## 1.3. In this Constitution, unless a contrary intention appears:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include all other genders;
- (c) any headings inserted in this Constitution are included for convenience and shall not affect its construction;
- (d) the word "includes" in any form is not a word of limitation;
- (e) the word "entity" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust; and
- (f) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning.

## 1.4. **Name of Company**

The name of the Company is the Australasian Railway Association (ARA) Limited.

## 1.5. **Nature of the Company**

- (a) The Company is limited by guarantee and does not have share capital.
- (b) The income and property of the Company, however derived or obtained, shall be applied solely towards the promotion of the objects of the Company as set forth in this Constitution, and, except as otherwise provided in this Constitution, no portion thereof shall be paid or transferred, directly or indirectly by way of dividend, bonus, or otherwise to any Members.
- (c) The liability of each member is limited. Each member guarantees to contribute up to a maximum of ten dollars (\$10.00) to the assets of the company if it is wound up while it is a member or within one year thereafter, and at the time of winding up the debts and liabilities of the company exceed its assets. The liability of the member is limited to making such contribution and no more.

## 1.6. **Replaceable Rules**

The Replaceable Rules in the Corporations Act do not apply to the Company.

# 2. **OBJECTS**

## 2.1. **Objects of the Company**

The objects for which the Company is established are to:

- (a) Be the peak representative body for all sectors of the rail industry in Australia and New Zealand that promotes, unites, represents and advocates for the common interests of members and the broader rail industry.

- (b) Be a strong, coordinated, unified and influential public voice for rail, championing the many benefits of rail and improvement opportunities so that the interests of members and the industry are represented.
- (c) Advocate to federal, state and territory jurisdictions for the development of a best-in-class Australasian rail industry that contributes to a livable and sustainable society that benefits the community.
- (d) Commission research and advocate evidence-based policy positions that strive to improve the overall environment for rail and positively influence the use, efficiency, safety of and investment in the industry.
- (e) Continue to provide a strong value proposition for current and potential members through an evolving program of work and events for the industry to connect, share knowledge and engage to enhance member opportunities and grow the industry.
- (f) Collaborate effectively with members, rail industry stakeholders, governments, and other relevant bodies in delivering the ARA strategic priorities and associated program of work.
- (g) Progress national credentials and competencies across the rail industry and promote the diverse career opportunities available in rail for women and men.
- (h) Promote the rail industry as a career of choice, work to support industry diversity and engage with governments to promote pathways for rail education.
- (i) Foster innovation in all facets of the rail industry and navigate issues to identify rail solutions in conjunction with industry working groups and committees.
- (j) Continually review the short-term and long-term strategic planning that drives the organisation to ensure it aligns with and meets the needs of members and the industry more broadly.
- (k) Engage in any other activity which the Board considers to be supportive or incidental to any object of the company.

## 2.2. Powers of the Company

The Company has all the powers of a natural person and of a body corporate including those set out in the Corporations Act.

## 2.3. Amendment

The objects of the Company may only be altered or amended by a special resolution passed in accordance with the Corporations Act.

# 3. MEMBERSHIP

## 3.1 Member Base

- (a) **Full Member** that may be allocated to a class of membership that is determined by the Board from time to time.
- (b) **Associate Member, Provisional Member and Affiliate.** Such a member is not eligible to:
  - (i) vote at any General Meeting of the Company (including the Annual General Meeting); or
  - (ii) elect or appoint a Director to the Board or be elected or appointed to the Board, but who otherwise has the rights and obligations of a Full Member, and who are entitled to hold themselves out to the public as being associated with the Company (subject to any restrictions or directions of the Board); and

- (c) such other classes of Member as the Board may determine from time to time, with such eligibility criteria as the Board may determine from time to time.
- (d) The rights and privileges of every Member will be personal to each Member and are not transferable except in the case of proxy votes as provided for in this Constitution and at law.
- (e) The Board may determine, amend or vary the rights and obligations attaching to any of the separate classes of membership of the Company.

### **3.2 Member Eligibility – Full Member**

Any entity or organisation (incorporated or otherwise) will be eligible to be a Full Member of the Company if it is an entity that is:

- (a) an accredited Rail Transport Operator (either as a Rail Infrastructure Manager or a Rolling Stock Operator or both), whether within Australia or elsewhere overseas;
- (b) an entity involved in freight operations;
- (c) an entity involved in passenger operations;
- (d) a government agency or organisation that controls the management of rail networks used by a Rail Transport Operator;
- (e) a manufacturer of rail related products, suppliers of services or equipment to the Industry, including maintenance services;
- (f) a contractor involved in all aspects of constructing rail infrastructure;
- (g) a consultant providing rail related services; or
- (h) an association with a key focus on the rail Industry;

and who:

- (i) agrees with the objects of the Company set out in clause 2.1; and
- (j) pays the Subscription determined by the Board.

### **3.3 Member Eligibility – Associate Member**

Any entity or organisation (incorporated or otherwise) or any individual will be eligible to be an Associate Member of the Company if they are:

- (a) an individual, small contractor or supplier with the equivalent of three or less full time employees supplying services or equipment to the Industry;
- (b) distinguished individuals who have given long and meritorious service to the Industry and whose activities promote or have promoted the objects of the Company;
- (c) individuals who are engaged in studies associated with the Industry;
- (d) a registered training organisation, that has an interest in the Industry generally; or
- (e) a tourism and/or heritage rail organisation that may be a registered charitable organisation and has an annual turnover from its operations of less than one million dollars per annum;

and who:

- (f) agrees with the objects of the Company set out in clause 2.1; and

- (g) pays the Subscription determined by the Board.

### **3.4 Member Eligibility – Provisional Member**

An applicant seeking to become a Full or Associate Member shall be a Provisional Member until the application is approved or rejected by the Board in accordance with clause 3.7.

### **3.5 Member Eligibility – Affiliate**

- (a) An entity is eligible to be an Affiliate upon registration for an ARA event, program conference or exhibition.
- (b) Affiliate status will require the payment of the charges applicable to participation in the event, program, conference or exhibition and the consent of the entity to be Affiliate.

### **3.6 Member Code of Conduct**

All Members of the Company must comply with the Code of Conduct.

### **3.7 Applications for Membership**

- (a) All applications to become a Full or Associate Member must be submitted to the Secretary in such form as the Board may determine. With each application form, the Secretary must supply a copy of (or give electronic access to) the Constitution. Upon submitting the application for membership the Secretary may advise the applicant of its Provisional Membership status.
- (b) The Board may, in its absolute discretion:
  - (i) approve or reject an application to become a Full or Associate Member submitted pursuant to clause 3.8(a); and
  - (ii) determine the class of membership for which an applicant or existing Member qualifies.
- (c) Where the Board approves an application for membership, the Secretary must, as soon as practicable after that determination, notify the applicant of that approval. Membership of the Company is deemed to commence upon the Secretary giving such notice.
- (d) If the Board rejects any application for membership, the Secretary must, as soon as practicable after that determination, notify the applicant of the rejection. The Board is not required to give reasons for such a rejection.
- (e) An application to be an Affiliate will be required for each event, program conference, or exhibition in which the entity may be engaged and the Affiliate status shall conclude at the end of that event, conference, program or exhibition. Nothing shall prevent eligible Affiliate entities from seeking Full or Associate Membership.

### **3.8 Register of Members**

- (a) The Secretary must maintain a “Register of Full and Associate Members” of the Company at the registered office. The register must be kept in accordance with the Corporations Act
- (b) The register must contain the following particulars:
  - (i) the name and address of each Full and Associate Member (which will be the address of the Member for the purpose of service of any notices to that Member);
  - (ii) the class of membership;
  - (iii) the date on which the Member becomes a Full or Associate Member; and
  - (iv) the date on which such a Member ceases to be a Member (if applicable).



### **3.9 Resignation**

- (a) Any Full or Associate Member who wishes to resign from the Company:
  - (i) must give written notice to that effect to the Secretary, which notice may be given by electronic mail;
  - (ii) will remain liable for any monies that are due and payable or that have accrued under the Member's Subscription up until the date the notice is given in accordance with clause 3.8 (a), provided all monies owing to the Company by the Member are paid by prior to the expiration of the notice; and
  - (iii) will not be entitled to any refund or other reduction (whether on a pro rata basis or otherwise) in respect of the Member's Subscription.
- (b) It is on the date of the expiration of the notice that the membership of the resigning Member will cease.

### **3.10 Disciplining Members**

- (a) If a Member breaches the Code of Conduct or this Constitution, the Board may resolve (in its absolute discretion) to counsel, suspend or expel a Member from the Company. The Board's resolution will be final and binding on the Member.
- (b) Before making a resolution under clause 3.10(a), the Board must give not less than 14 days' written notice to the Member which sets out the nature of the breach, the proposed resolution and the date of the Board meeting where the proposed resolution will be considered and:
  - (i) the Member may provide a written explanation to the Board before the Board meeting and/or speak at the board meeting; and
  - (ii) the Board will consider any explanation that is provided by the Member before and/or at the Board meeting.
- (c) The Board will give written notice to the Member of any resolution made under clause 3.10 (a), including a resolution to take no further action. A suspension or expulsion will take effect on the date set out in this notice.

### **3.11 Cessation**

- (a) A Full or Associate Member will cease to be a Member if:
  - (i) the Member resigns in accordance with clause 3.8; or
  - (ii) the Board resolves to expel the Member under clause 3.10;
  - (iii) the Member, that is a body corporate, has a liquidator, provisional liquidator or administrator appointed or otherwise takes steps to obtain protection, or is granted protection, from its creditors under any applicable legislation;
  - (iv) the Member, that is an individual, dies or becomes mentally incapacitated, or becomes bankrupt or otherwise takes steps to obtain protection, or is granted protection, from its creditors under any applicable legislation;
  - (v) the Member fails to renew its membership;
  - (vi) the Member is un-financial for a period of one (1) month, unless the Board otherwise resolves by ordinary resolution not to terminate the Member's Membership; or
  - (vii) the Member ceases to meet the eligibility requirements for membership set out in clause 3 of this Constitution.

- (b) Any Member whose membership of the Company ceases or is terminated will be liable for all moneys due by that Member to the Company.
- (c) Any Member whose membership ceases or is terminated must not make any claim, monetary or otherwise, on the Company, its funds or property, except as a creditor of the Company.
- (d) Members acknowledge that all Subscriptions paid are non-refundable and that they are not entitled to a refund of any part of a Subscription paid prior to their membership ceasing.
- (e) Any person or corporation who for any reason ceases to be a Member must no longer represent itself in any manner as being a Member or otherwise associated with the Company.

### **3.12 Liability of Members**

No membership interest benefit or right of any member is capable of being sold or transferred in any manner whatsoever and a membership interest shall automatically lapse if there is any such purported sale or transfer or if any agreements are entered into by a member to effect such a sale or transfer.

### **3.13 No Profits for Members**

- (a) The assets and income of the company shall be applied solely in furtherance of the objects of the company and no portion of the income or assets of the company may be paid or transferred, directly or indirectly, to any member, except as bona fide compensation for service rendered or expense incurred on behalf of the company
- (b) Nothing in subclause (a) prevents the payments in good faith of:
  - (i) Remuneration to any Independent Chairperson engaged by the Board;
  - (ii) Remuneration to any officers or employees of the company for services actually rendered to the company provided such remuneration is reasonable compensation for the services provided;
  - (iii) An amount to any member in return for any services actually rendered to the company (whether by the member or any corporation or partnership in which the member has an interest or is a member) or for goods supplied in the ordinary and usual course of business;
  - (iv) Reasonable and proper interest on money borrowed from any member; or
  - (v) Reasonable and proper rent for premises let by any member to the company.

## **4. MEMBERSHIP SUBSCRIPTIONS**

### **4.1. Subscriptions**

- (a) All Members must pay the Subscription to the Company as and when they are due. The Board may (at its discretion) prorata a Subscription for the first year if a Member joins after the commencement of the Financial Year in which they become a Member.
- (b) Each Member will, whenever requested in writing by the Secretary to do so, provide such information as is reasonably required by the Company in order to determine the Member's Subscription or class of membership.

### **4.2. Timing of Payment**

- (a) Each Member must pay their first Subscription pursuant to clause 3.2(j) or 3.3(g).
- (b) After the first subscription, subscriptions are then payable on and from 1st of July in each Year in accordance with clause 4.1 unless otherwise agreed by the Board.

#### 4.3. **Un-financial Members**

- (a) A Member will be deemed un-financial if their Subscription (or any part of their Subscription) is unpaid one (1) month after the due date and will remain un-financial for as long as the Subscription (or any part of the Subscription) is outstanding.
- (b) Whilst a Member is un-financial, they will not be entitled to exercise any voting rights at any General Meeting and will not be eligible to nominate a person to be elected to the Board.
- (c) Where the Board has made a resolution under clause 3.11(vi), the Member's membership may be terminated by further ordinary resolution of the Board at any time whilst the Member is un-financial.

#### 5. **ANNUAL GENERAL MEETINGS**

Annual General Meetings of the company shall be held in accordance with the provisions of the Corporations Act.

##### 5.1 **Holding of Annual General Meeting**

The Company must, at least once in each Year and within a period of five (5) months after the expiration of each Financial Year, convene an Annual General Meeting.

##### 5.2 **Procedures at Annual General Meeting**

The procedures at General Meetings set out in clauses 6, 7, 8 and 11 of this Constitution apply equally to Annual General Meetings.

##### 5.3 **Notice**

- (a) The Secretary must cause a notice to be given to all Members setting out the date, time and place of the Annual General Meeting and such notice must be given not less than 21 days prior to the date scheduled for the Annual General Meeting.
- (b) The accidental omission to give notice to any Member in accordance with clause 5.3(a) does not invalidate the proceedings at the Annual General Meeting.

##### 5.4 **Business of Annual General Meeting**

In addition to any business included in an agenda published by the Company, the business at an Annual General Meeting must be:

- (a) to confirm the minutes of the preceding Annual General Meeting and of any General Meeting held since that preceding Annual General Meeting;
- (b) to consider the annual financial report, the Board's report and auditor's report and the audited financial statements of the Company;
- (c) to elect General Directors pursuant to clause 11.4. (if it is an election year);
- (d) to endorse the appointment of the Chairperson and any Additional Directors;
- (e) to appoint a qualified auditor for the upcoming year and determine their remuneration (if any);
- (f) to present the strategic plan; and
- (g) to consider such other business as may be required by law to be transacted at the Annual General Meeting.

## 6. GENERAL MEETINGS

### 6.1 Written Resolutions of Members

The Company may pass a resolution without a meeting of the Members in accordance with Section 249A of the Corporations Act as if the Company were a proprietary company. For clarity, only Full Members are entitled to vote on the resolution and therefore pass the resolution in this manner.

### 6.2 Calling of General Meetings

- (a) The Board may, whenever it thinks fit, convene a General Meeting of the Company.
- (b) The Board must, upon the requisition of Full Members holding at least five percent (5%) of the votes that may be cast at a General Meeting, call a General Meeting of the Company within twenty one (21) days of the request being received. Such General Meetings must be held within two (2) months of the requisition.

### 6.3 Requisition for General Meetings

Any requisition for a General Meeting made by the Full Members in accordance with clause 6.2(b) must:

- (b) be in writing;
- (c) state any business or resolutions to be proposed at that General Meeting;
- (d) be signed by all the Full Members making the request (the “**Requisitionists**”); and
- (e) otherwise comply with the requirements of section 249D of the Corporations Act.

A requisition under this clause 6.3 may be delivered to the Secretary in person, by post or by electronic mail.

### 6.4 Action where Board does not call a General Meeting

If the Board does not call a General Meeting within 21 days after the requisition is given to the Company in accordance with clause 6.2(b), the Requisitionists may themselves:

- (a) issue a notice of a General Meeting in accordance with clause 6.5; and
- (b) after 21 days of that notice being given, convene a meeting in the same manner or as near as possible to the manner in which General Meetings are convened by the Board, provided that such a meeting is not held after the expiration of three months from the date of the requisition.

### 6.5 Notice of Meetings

- (a) The Company must give not less than twenty one (21) days’ notice of a meeting of the Members.
- (b) A notice of a meeting of the Members is taken to be given:
  - (i) if sent by pre-paid post, three (3) days after it is posted;
  - (ii) if sent by facsimile, when the sender’s facsimile system generates a message confirming successful transmission of the entire notice unless, within eight business hours after the transmission, the recipient informs the sender that it has not received the entire notice; or
  - (iii) if sent by electronic mail, when the sender’s electronic mail system generates a message confirming successful transmission of the entire notice, unless, within eight business hours after the transmission, the recipient informs the sender that it

has not received the entire notice, but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

- (c) Notice of a meeting of Members must be given to each Member, each Director, each Alternate Director and any Auditor of the Company.
- (d) A notice of a meeting must:
  - (i) set out the place, date and time for the meeting;
  - (ii) state the general nature of the business of the meeting; and
  - (iii) set out or include any other information or documents specified by the Corporations Act.
- (e) The accidental omission to give notice to, or the non-receipt of notice by, a Member or another entitled person, will not invalidate the proceedings or any resolution at any Company meeting.

## 7. PROCEEDINGS AT GENERAL MEETINGS

### 7.1 Quorum

- (a) No business will be transacted at any General Meeting (including an Annual General Meeting) unless a quorum of Members is present at the time when the meeting proceeds to business.
- (b) A quorum for a General Meeting is 10% of financial Full Members (whether in person or by proxy).
- (c) In determining whether a quorum for a General Meeting is present:
  - (i) where more than one proxy, attorney or representative of a Full Member is present, only one of those persons is counted; and
  - (ii) subject to clause 7.1(c)(i), where a person is present as a Full Member and as a proxy, attorney or representative of another Full Member, that person is counted once as the Member and is counted again for each proxy that it holds for the purposes of the quorum.
- (d) A quorum must be present at all times during the meeting.
- (e) If a quorum is not present within thirty (30) minutes after the time appointed for the General Meeting:
  - (i) the meeting is dissolved; and
  - (iii) another meeting is adjourned to the date, time and place as the Directors may by notice to the Members appoint, or failing any appointment, to the same day in the next week at the same time and place as the adjourned meeting.

### 7.2 Chairperson for General Meetings

- (a) The Chairperson will preside as the chair at every meeting of the Company.
- (b) If the Chairperson is not present within fifteen minutes after the time appointed for the meeting or is unwilling to act, then the Directors present shall elect one of their number to preside as chair of the meeting.
- (c) If there are no Directors present or willing to act then the Members present shall elect one of their number to preside as chair of the meeting.

- (d) The chair of a meeting of Members does not hold a vote.

### 7.3 **Adjourned Meetings**

- (a) The chair of any meeting of Members may, with the consent of any meeting in which a quorum is present (and shall as directed by that meeting), adjourn the meeting to another time and/or another place, but no further business may be transacted at the meeting from which the adjournment took place until the meeting is resumed.
- (b) Where a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one month or more.

### 7.4 **General Conduct of Meetings**

- (a) Subject to the Corporations Act, the chair of a meeting of Members is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The chair of a meeting of Members may delegate any power conferred by this Constitution in respect of the conduct of the meeting to any person.
- (c) Only unfinished business is to be transacted at a meeting resumed after an adjournment.
- (d) Only items of business described in the notice of a General Meeting or Annual General Meeting may be transacted at that meeting. Members are not entitled to propose any new items to be considered by the Company at a General Meeting or Annual General Meeting.

## 8. **VOTING**

### 8.1. **Voting Rights**

- (a) Each Full Member present, in person or by proxy, at a General Meeting is entitled to vote on any resolution put at any General Meeting and have one (1) vote.
- (b) For the sake of clarity, Associate, Provisional and Affiliate Members are entitled to be present but are not entitled to a vote at any General Meeting (or Annual General Meeting) of the Company, unless they hold a proxy for a Full Member and are exercising that proxy.

### 8.2. **Resolutions of Members**

- (a) Subject to the Corporations Act, a resolution is passed if more votes are cast in favour of the resolution by Members entitled to vote on the resolution than against the resolution.
- (b) A challenge to a right to vote at a meeting of Members may only be made at the meeting and must be determined by the chair, whose decision is final.
- (c) Unless a poll is demanded in accordance with clause 8.3, a resolution put to the vote at a meeting of Members must be decided on a show of hands. Before a vote is taken the chair must inform the meeting whether any proxy votes have been received and how the proxy vote must be cast.
- (d) On a show of hands, a declaration by the chair of a meeting of Members is conclusive evidence of the result provided that the declaration reflects the show of hands and the votes of proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

### 8.3. **Polls**

- (a) A poll may be demanded on any resolution at a meeting of Members, by any Full Member or by the chair:
  - (i) before a vote on that resolution is taken; or
  - (ii) before or immediately after the results of the vote on that resolution on a show of hands are declared.

- (b) A demand for a poll may be withdrawn.
- (c) A poll demanded on a resolution at a meeting of Members must be taken in the manner and at the time and place the chair of the meeting directs.
- (d) The result of the poll demanded on a resolution of a meeting of Members is a resolution of that meeting.
- (e) A demand for a poll on a resolution of a meeting of Members does not prevent the continuance of that meeting or that meeting dealing with any other business.

#### 8.4. **Subscriptions Must be Paid**

No Member is entitled to vote at any meeting if they are deemed to be un-financial in accordance with clause 4.3.

#### 8.5. **Proxies**

- (a) A Member who is entitled to attend and cast a vote at a meeting of Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.
- (b) Such appointment must be in writing (in a form approved by the Board from time to time) and include the name of the Member, the name of the proxy and be signed by the Member. Scanned copies of originals are acceptable.
- (c) The instrument appointing a proxy must be deposited with the Secretary not less than 48 hours before the time for holding the meeting, or the adjourned meeting at which the person named in the instrument proposes to vote.
- (d) Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
  - (i) the appointing Member dies; or
  - (ii) the Member is mentally incapacitated; or
  - (iii) the Member revokes the proxy's appointment; or
  - (iv) the Member revokes the authority under which the proxy was appointed by a third party.
- (e) A proxy's authority to vote is suspended while the Member is present at the meeting.

#### 8.6. **Electronic Meetings of Members**

A meeting of Members may be called or held using any technology that provides contemporaneous linking together by an instantaneous communication device.

### 9. **COMPANY BOARD**

#### 9.1. **The Board**

- (a) The affairs of the Company shall be controlled and managed by or under the direction of the Board.
- (b) The Board shall be constituted as follows:
  - (i) up to eight (8) General Directors, comprising:
    - (A) Three (3) Directors drawn from entities performing passenger operations;
    - (B) Three (3) Directors drawn from entities performing freight operations;

- (C) One (1) Director drawn from rail related manufacturers and suppliers;
  - (D) One (1) Director drawn from rail related contractors;
- (ii) up to five (5) Industry Sector Directors comprising a maximum of one (1) representative from each of the executive committees established by the Board for Industry, being the Passenger Operators Executive Committee, Rail Freight Executive Committee, Rail Industry Executive Committee, Rail Infrastructure Contractors Executive Committee and from the Annual General Meeting in 2021, the Heavy Haul Executive Committee (**Industry Sector Committees**);
  - (iii) an Independent Chairperson, unless a current Director is appointed to be Chairperson; and
  - (iv) the Chief Executive Officer.
- (c) The Board may, by ordinary resolution, appoint additional Directors such as persons with special qualifications which the Board considers to be desirable to permit the efficient operation of the Company and/or the achievement of the objects of the Company;
  - (d) Subject to clause 9.1(b) and 9.1(c), the Company must have at least ten (10) Directors, unless otherwise decided by ordinary resolution.
  - (e) The Board shall, subject to these clauses and the Corporations Act control and manage the affairs of the Company and may:
    - (i) exercise all such powers of the Company other than those powers and functions that are required by these clauses to be exercised by General Meetings of Members;
    - (ii) perform all such acts and things as appear to the Board to be desirable or essential for the proper management of the business affairs of the Board including the arrangement of all compulsory insurances;
    - (iii) establish Committees of the Board to consider specific issues relevant to the general governance of the Company, which may include an Executive Committee, Nomination and Remuneration Committee and Audit and Risk Committee;
    - (iv) appoint such other working groups as it deems necessary. Such working groups may include persons who are not Members;
    - (v) appoint from time to time the Chief Executive Officer to fulfil the duties of that office; and
    - (vi) do all things appropriate to fulfil the objects of the Company.

## 9.2. Eligibility for General Directors

- (a) A person is only eligible for nomination as a General Director if he or she meets the following criteria:
  - (i) the person consents to being appointed a Director of the Company;
  - (ii) the person is a natural person;
  - (iii) the person must be nominated by their employer or sponsoring organisation who is a Full Member; and
  - (iv) the person's employer or sponsoring organisation must be a Full Member representing and engaged in one of the four categories:
    - (A) Passenger operations;
    - (B) Freight operations;
    - (C) Manufacturers or suppliers of rail related products and services; or
    - (D) Contractors and/or other Industry participants.



- (b) No person is eligible to be elected or appointed to the Board as a General Director unless their employer or sponsoring organisation (who is a Full Member) has paid their Subscription in accordance with clause 4.

**9.3. Term of Office**

- (a) Subject to clause 26.2, a Director holds office from the conclusion of the Annual General Meeting at which they were elected or endorsed until the conclusion of the third Annual General Meeting following their election, unless the Director sooner resigns, vacates the office or is disqualified from holding the office.
- (b) Newly elected or appointed Directors take office with effect from the conclusion of the Annual General Meeting at which they are elected or endorsed. The Board may resolve to appoint any Additional Director for a period other than as set out in clause 9.3(a), provided that such period does not exceed 3 years.

**9.4. Board Themes**

The Nomination and Remuneration Committee will determine the Board Themes in each year. The Board Themes must be considered by the Board, the Industry Sector Committees or the Members (as applicable) prior to making any resolution to elect or appoint a Director.

**10. CHAIRPERSON**

**10.1. Role**

- (a) The Company must have a Chairperson appointed by the Board at all times to maintain oversight of the Company and the performance of the Chief Executive Officer and keep the Board informed of any issues relevant to the Company.
- (b) By resolution of the Board, the Chairperson, subject to clause 10.2 may be an Independent Chairperson.

**10.2. Eligibility**

- (a) When the office of Chairperson is vacant or expected to become vacant, the Board must promptly nominate a person to be appointed as the Chairperson.
- (b) A person is eligible for nomination as Independent Chairperson if he or she meets the following criteria:
  - (i) the person consents to being appointed the Independent Chairperson of the Company;
  - (ii) the person does not hold any office of profit, nor has any direct pecuniary interest in an institution or body that performs, or may perform during the person's tenure as Independent Chairperson, services for reward for the Company;
  - (iii) the person is a person who would promote public confidence in the integrity, legitimacy, impartiality, rigor of work being undertaken, and fairness of the Company.

**10.3. Term of Office**

The Independent Chairperson holds office from the time determined by resolution of the Board until the conclusion of the next occurring Annual General Meeting at which their appointment may be confirmed to continue until the conclusion of the second Annual General Meeting following their appointment, unless the Independent Chairperson sooner resigns, vacates the office, is disqualified from holding the office or his appointment is discontinued by resolution of the Board.

## 11. ELECTION

### 11.1. At the Annual General Meeting

- (a) Election of the Board must take place at the Annual General Meeting of the Company.
- (b) The Board Themes must be included in the papers for any Annual General Meeting of the Company where an election will take place.

### 11.2. Nomination Process for General Directors

- (a) Candidates for the office of General Director will be proposed in writing by any Full Member and seconded by any Full Member of the Company.
- (b) The nomination form for General Directors will be invalid unless it:
  - (i) bears the written consent of the candidate to their nomination and states which category of Members the candidate will be representing, namely:
    - (A) Passenger Operations;
    - (B) Freight Operations;
    - (C) Manufacturers or Suppliers of rail related products; or
    - (D) Contractors and / or other industry participants;
  - (ii) addresses the Board Themes.
- (c) Such nomination must be delivered in person to the Secretary, or sent by post or electronic mail, to be received by the Secretary no later than seven days prior to the date by which the Secretary must issue the notices of the relevant Annual General Meeting. The Secretary will confirm this relevant closing date at the time the Secretary calls for nominations.
- (d) If no valid written nominations are received for a particular office or offices then the Secretary will call for nominations from the meeting itself.
- (e) The people nominated must indicate acceptance of such nomination.

### 11.3. Nomination Process for Industry Sector Director

In accordance with clause 9.1(b), an Industry Sector Director is to be nominated by the members of the executive committee established by the Board for the Industry Sector that he or she is to represent on the Board.

### 11.4. Election and Endorsement Process

- (a) The election of General Directors and the endorsement of the Independent Chairperson and any Additional Directors must be decided by ordinary resolution.
- (b) If no such resolution is passed, then the existing Chairperson or Director (as applicable) will continue in office for a further three (3) months when the Board will re-nominate persons to serve as the Chairperson and Directors (whichever is appropriate). The Board will call an Extraordinary General Meeting for the Members to endorse the new appointments.
- (c) If the person nominated as Independent Chairperson is not already a Director of the Company, the person automatically becomes a Director upon being appointed as the Independent Chairperson by the Board.
- (d) In respect of General Directors, if there are no more nominations for an office than the number of vacancies to be filled, the Secretary will declare the nominee or nominees elected to the office for which they were nominated.
- (e) Where candidates exceed the number of vacancies for a General Director an election will be held by secret ballot amongst the Full Members present and entitled to vote. The Board may determine the manner in which the election is conducted from time to time.
- (f) The Secretary will prepare the ballot papers and determine the manner in which votes are marked thereon.

- (g) Each Full Member present at the Annual General Meeting must vote for candidates using a voting paper provided by the Company for that purpose. A preference ranking must be given to each candidate and any voting paper which does not include a preference ranking is invalid.
- (h) Before the return of voting papers, the Board must appoint two (2) scrutineers.
- (i) The scrutineers must total the votes allocated to each candidate on the voting papers and then report to the Secretary with the result of the vote.
- (j) The candidate(s) with the highest number of first preference votes is elected to the office which they were nominated for.

## 12. **REMOVAL OF DIRECTORS AND VACATION OF OFFICE**

### 12.1. **Removal**

- (a) A Director may be removed from office by ordinary resolution of the Board for Serious Misconduct, with effect from the end of the Board Meeting where the resolution is passed and where the Director to be removed is not entitled to vote on the resolution.
- (b) The Company may remove, before the expiration of their period of office, any Director by ordinary resolution and may, by ordinary resolution, appoint another person in their stead.
- (c) The person so appointed shall only be appointed for the remainder of the term held by the previous Director.

### 12.2. **Vacancies Generally**

A Director (including the Chairperson) vacates office if he or she:

- (a) dies;
- (b) becomes bankrupt or insolvent; or
- (c) resigns their office by notice in writing given to the Secretary;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (e) fails to attend three (3) consecutive meetings without prior notice of absence having been approved by the Board; or
- (f) (in respect of General Directors only) ceases to be nominated by their employer or sponsoring organisation, who is a Full Member.

### 12.3. **Filling Casual Vacancies**

- (a) The Board has the power, at any time and from time to time, to appoint a person to hold office as a Director on the Board to fill a casual vacancy, provided they meet any relevant eligibility criteria.
- (b) Any person appointed under clause 9.2(a) as a General Director will hold office until the next Annual General Meeting during which the Company must:
  - (i) confirm the appointment of that person as a General Director for the remainder of the term held by the previous Director; or
  - (ii) appoint a new person to the Board for the remainder of the term held by the previous General Director.
- (c) In the case of an Industry Sector Director, a casual vacancy can be filled by processes determined by the relevant Industry Sector Committee.

## 13. **PROCEEDINGS OF THE BOARD**

### 13.1. **Meeting Frequency**

The Board shall meet at least four (4) times each Year at such places and such times as the Board may determine.

### 13.2. **Calling Board Meetings**

Meetings of the Board may be convened by the Chairperson or by any Director.

### 13.3. **Notice**

Written notice of each meeting of the Board shall be served on each Director at least seven (7) Business Days before the meeting by:

- (a) delivering it to them personally; or
- (b) sending it by facsimile or electronic transmission to a number or email address nominated by the Director.

### 13.4. **Quorum**

- (a) 50% of Directors (personally present or participating by telephonic or electronic media) constitute a quorum for the business of a meeting of the Board. For certainty, Directors include Alternate Directors where Directors are not available.
- (b) No business shall be transacted at a Board meeting unless a quorum is present and if, within thirty (30) minutes of the time appointed for the meeting a quorum is not present, the meeting shall be dissolved.

### 13.5. **Chair**

- (a) The Chairperson must (if present within fifteen (15) minutes after the time appointed for the holding of the meeting and willing to act) chair each meeting of Directors.
- (b) The Directors present must elect one of themselves to chair all or part of the meeting of Directors if:
  - (i) there is no Chairperson; or
  - (ii) the Chairperson is not present within 15 minutes after the time appointed for the holding of a meeting of Directors; or
  - (iii) the Chairperson is present within that time but is not willing to chair all or part of that meeting.

### 13.6. **Voting at Board Meetings**

- (a) Questions arising at a meeting of the Board or any working group appointed by the Board shall be determined on a show of hands or, if demanded by a Director, by a poll taken in such a manner as the person presiding at the meeting may determine.
- (b) Each Director present at a meeting of the Board (including the person presiding at the meeting) is entitled to one (1) vote and, in the event of an equality of votes on any question, the Chairperson shall have a second or casting vote.

### 13.7. **Circulating Resolutions**

- (a) Where a Board Meeting is not physically held, a resolution in writing signed by a majority of Directors for the time being entitled to receive notice of a meeting thereof, will be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held.
- (b) Any such resolution may be transmitted to the Directors by electronic email and may consist of several documents in like form each signed by one or more Directors.
- (c) A Director may sign a circular resolution using an electronic signature (a visual representation of a person's handwritten signature placed on the document, including using an electronic signing platform agreed by the Board from time to time).
- (d) Electronic copies of scanned originals of signed copies will be sufficient evidence of a signed assent by Directors.

13.8. **Validity of Acts of Directors**

If it is afterwards discovered that there was some defect in the election or appointment of a person to be an officer or a Director by the Board, or to act in that capacity, or that a person so elected or appointed was disqualified, all acts done by that person are valid as if the person had been duly elected or appointed and was qualified to act in that capacity.

13.9. **Use of Technology**

A Meeting of Directors may be called or held using any Technology that provides contemporaneous linking together by an instantaneous communication device.

13.10. **Absences from Board Meetings**

A Director who is unable to attend a particular Board Meeting should record his or her apology. In such circumstances, the Director may request that he or she be represented at the Board Meeting by an appropriate representative on the basis that the Chairman approves the attendance of such person as a guest with no voting rights.

14. **INTERESTS OF DIRECTORS**

14.1. **Directors Duties**

All Directors must act in the best interests of the Company as a whole and must not represent or advocate for any of their sponsors' positions in discussions on issues considered by the Board.

14.2. **Disclosure of Interests**

If a Director has a material personal interest in a matter that relates to the affairs of the Company and:

- (a) the Director discloses the nature and extent of the interests and its relation to the affairs of the Company at a meeting of the Directors in accordance with the Corporations Act; or
- (b) the interest is one that does not need to be disclosed,

then:

- (c) the Director may vote on matters that relate to the interest; and
- (d) any transaction that relates to the interest may proceed; and
- (e) the Director may retain benefits under the transaction even though the Director has the interest; and
- (f) the Company cannot avoid the transaction merely because of the existence of the interest.

14.3. **Prior Disclosure**

If disclosure is required in accordance with the Corporations Act, clauses 14.2(d) and 14.2(f) apply only if the disclosure is made before the transaction is entered into.

15. **SECRETARY**

15.1. **Appointment**

- (a) The Secretary will be appointed by the Board on the recommendation of the Chief Executive Officer.
- (b) The Secretary will be experienced in the requirements for the role of Secretary and the governance of not for profit organisations.
- (c) In the event of the resignation of the Secretary from the Company and pending the appointment of a new Secretary the Chief Executive Officer is to perform the duties of Secretary.

15.2. **Obligations of Secretary**

The Secretary shall:

- (a) arrange to keep minutes of the resolutions and proceedings of each General Meeting and each Board meeting in books provided for that purpose, together with a record of the names of persons present at meetings;
- (b) arrange to retain copies of all board papers and if in electronic form to be kept and backed up on separate medium on separate systems;
- (c) shall collect and receive all moneys due to the Board and make all payments on behalf of the Board;
- (d) shall keep correct accounts and books showing the financial affairs of the Board with full details of all receipts and expenditure connected with the activities of the Board;
- (e) prepare and file on behalf of the Board all Company returns required by the Corporations Act; and
- (f) act as returning officer at elections.

16. **CHIEF EXECUTIVE OFFICER**

16.1. The Board shall determine and approve the remuneration of the Chief Executive Officer.

16.2. The Chief Executive Officer shall be responsible for the day to day running of the Company including:

- (a) financial management including the preparation and lodgment of tax and other returns required by law;
- (b) human resource management;
- (c) marketing and public relations;
- (d) project management;
- (e) assisting the Board in its development of its strategic plan; and
- (f) developing operational plans to give effect to the Company's strategic plan.

17. **REMUNERATION**

17.1. If the Chairperson is appointed as the Independent Chairperson he or she is to be paid, in the aggregate, the remuneration determined by resolution at a meeting of the Board.

- 17.2. The Company may pay the expenses incurred by the Independent Chairperson provided that those expenses are properly and reasonably incurred:
- (a) in attending Board meetings or any meetings of committees of the Board;
  - (b) in attending any meeting of Members; and
  - (c) in connection with the Company's business.

18. **EXECUTION OF DOCUMENTS**

The company may execute documents in accordance with section 117 of the Corporations Act.

19. **OTHER COMMITTEES**

The Board may appoint such committees as it deems appropriate and which may include persons who are not Members of the Company.

20. **ADMINISTRATION**

20.1. **Minutes and Board Papers**

- (a) The Board must cause minutes to be made in books in accordance with the Corporations Act and to be provided for the purpose of:
  - (i) all appointments of officers made by the Board;
  - (i) the names of the Directors present at each Board meeting and at any committee meetings; and
  - (ii) all resolutions and proceedings at all meetings of the Company and the Members of the Company and of the Directors and of committees.
- (b) The minute books must be held at the registered office of the Company.
- (c) The minutes may be made and held electronically, provided they are capable of being reproduced in written form at any time.
- (d) The minutes and Board papers must be made available on request to any current and former Director and may be used by a Director or former Director in any legal proceeding except a proceeding instituted by the Director against the Company.

20.2. **Accounts**

- (a) A separate bank account shall be established in which all of the Company's income and expenditure is recorded.
- (b) The Board will cause proper books of account to be kept which including full, true and complete accounts of the affairs and transactions of the Company. Proper books will not be deemed to be kept unless the books give true and fair view of the state of the Company's affairs and explain the transactions.
- (c) Subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the Constitution, the books of account must be kept at the registered office and any other place the Board requires and will be open to the inspection of the Board at any time.
- (d) The Board will provide financial reports, which comprise a balance sheet and an income statement in respect of the last completed Financial Year of the Company and as required by the Corporations Act.

### 20.3. **Income**

The income and property of the Company will only be applied towards the promotion of the objects of the Company as set out in clause 2.1.

### 20.4. **Payments**

All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments for payment shall be signed by at least two (2) accredited officers authorised to do so by the Board or if electronic via two independent electronic signoffs by separate accredited officers.

### 20.5. **Audit**

- (a) The books of account, and financial reports and records shall be audited each year by an Auditor or Auditors appointed by the Members at the Annual General Meeting in accordance with the Corporations Act.
- (b) The remuneration of the Auditor must be fixed and the Auditor's duties regulated in accordance with the Corporations Act.
- (c) If any casual vacancy occurs in the office of the Auditor the Board shall appoint the Auditor and fix the Auditor's fee within one month of the vacancy. The Auditor so chosen will hold Office as Auditor of the Company until the next Annual General Meeting following their appointment.
- (d) The Auditor or the Auditor's agent so authorised in writing is entitled:
  - (i) to attend any General Meeting;
  - (ii) for that purpose to receive all notices of and other communications relation to any General Meeting which the Members are entitled to receive; and
  - (iii) to be heard at any General Meeting which he or she attends on any part of the business of the meeting which concerns the Auditor as Auditor, and is entitled to be heard.

### 20.6. **Custody of Records**

- (a) Except as otherwise provided in the Constitution, the Secretary shall keep in their custody or under their control all books, documents and securities of the Company, which shall be available for inspection at all reasonable times by the Members.
- (b) Upon the request of a Member and the payment of the fee prescribed by the Board, the Secretary will arrange to provide the Member with copies of:
  - (i) the current Constitution of the Company; and
  - (ii) the Deeds of any trust of the Company.

### 20.7. **Inspection of Records**

Subject to the Corporations Act, the Directors must determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of the Members, and the Members do not have any right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in meeting of the Company's Members.

## 21. **WINDING UP AND LIABILITY**

### 21.1. **Dissolution**

The Company may be dissolved by a special resolution of the Full Members at a General Meeting.



## 21.2. **Contribution of the Member on Winding Up**

Every person who is or has been a Member undertakes to contribute to the assets of the Company in the event of the Company being wound up while he or she is a Member, or within one year of ceasing to be a Member, such amount as may be required not exceeding ten dollars (\$10.00), for the payment of the debts and liabilities of the Company contracted whilst the Member or past Member as the case may be was a Member of the Company, and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributors amongst themselves.

## 21.3. **Distribution of Property on Winding Up**

Where on the winding up of the Company or dissolution of the Company there is a surplus of assets after satisfying all the Company's liabilities and expenses, the surplus will not be paid or distributed to any Member but will be given or transferred to another institution or company having similar objects to those described in clause 2 hereof, being an institution or body that prohibits the distribution of income, profit or assets to its members, or to the Commonwealth of Australia.

## 21.4. **Officers Indemnities and Insurance**

- (a) To the extent permitted by the Corporations Act:
- (i) the Company indemnifies every person who is or has been an Officer of the Company or of a wholly-owned subsidiary of the Company against any liability for costs and expenses incurred by that person in defending any proceedings in which judgement is given in that person's favour, or in which the person is acquitted, or in connection with an application in relation to any proceedings in which the Court grants relief to the person under the law; and
  - (ii) the Company indemnifies every person who is or has been an Officer of the Company or of a wholly-owned subsidiary of the Company against any liability incurred by that person, as an Officer of the Company or of a wholly-owned subsidiary of the Company, to another person (other than the Company or a Related Body Corporate of the Company) unless the liability arises out of conduct involving a lack of good faith.
- (b) The Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer of the Company or of a subsidiary of the Company against a liability:
- (i) incurred by the person in their capacity as an Officer of the Company or of a subsidiary of the Company or in the course of acting in connection with the affairs of the Company of a subsidiary of the Company or otherwise arising out of the Officer holding such office provided that the liability does not arise out of conduct involving a willful breach of duty in relation to the Company or a subsidiary of the Company or a contravention of Sections 182 and 183 of the Corporations Act; or
  - (ii) for costs and expenses incurred by that person in defending proceedings, whatever their outcome.
- (c) In this clause 21.4:
- (i) the term "proceedings" means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in their capacity as Officer, or in the course of acting in connection with the affairs of the Company or a wholly-owned subsidiary or subsidiary of the Company, or otherwise out of the Officer holding such office, including proceedings alleging that he or she was guilty of negligence, default, breach of trust or breach of duty in relation to the Company or a wholly-owned subsidiary or subsidiary of the Company; and
  - (ii) The term "Officer" has the meaning given to that term in section 9 of the Corporations Act.

22. **BY-LAWS**

22.1. The Board may make By-Laws as it may deem appropriate for the proper conduct, control and management of the Company and, in particular:

- (a) the management and good governance of the affairs of the Company;
- (b) the conduct of the Company's employees;
- (c) the setting apart of any part or parts of the Company's premises or properties for particular purposes;
- (d) the procedure at meetings of the Company and its committees;
- (e) the formation of any committee including the composition, terms of reference and other relevant matters of such committees; and
- (f) generally, all such matters as are commonly the subject matter of regulations for the proper conduct of companies similar to the Company and are not expressly dealt with in this Constitution.

23. **VARIATION OF CONSTITUTION**

The Constitution may not be varied except by a special resolution passed at a General Meeting of the Company.

24. **SEVERING INVALID PROVISIONS**

24.1. **Invalidity**

If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction that does not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Constitution.

25. **TECHNOLOGY**

25.1. **General Meetings by Using Technology**

Without limiting the discretion of the Board to regulate their meetings and General Meetings, the Board may, if it sees fit, give notice of meetings, confer or meet or hold elections using any Technology.

25.2. **Resolutions**

Notwithstanding that the Board or the Members (as applicable) are not present together in one place at the time of the meeting, a resolution passed will be deemed to have been passed at a meeting of the Board or the Company held on the day and time at which the meeting was held.

25.3. **Quorum**

A Director or Member (as applicable) present at the commencement of the meeting will be conclusively presumed to have been present and, subject to other provisions of this Constitution, to have formed part of the quorum throughout the meeting.

25.4. **Procedures**

The provisions relating to the procedure of Board Meetings and General Meetings apply to the meeting to the extent they are capable of applying, and with the necessary changes.

26. **TRANSITIONAL PROVISIONS**

26.1. **Vacation of Office**

All Directors who hold office immediately before the adoption of the Constitution on 1 July 2016:

- (a) will hold office until the conclusion of the first Annual General Meeting held immediately after the adoption of this Constitution at which time they will vacate their office notwithstanding any prior appointment period; and
- (b) are eligible for nomination and appointment to the Board for the period from the conclusion of the first Annual General Meeting held immediately after the adoption of this Constitution provided they meet the eligibility criteria under this Constitution.

26.2. **Board Appointment**

The Directors elected at the first Annual General Meeting held immediately after the adoption of the Constitution on 1 July 2016 hold office as follows:

- (a) the Chairperson holds office from the conclusion of the Annual General Meeting at which they were elected until the conclusion of the second Annual General Meeting following his or her election;
- (b) One half of the number of General and Industry Sector Directors (hold office from the conclusion of the Annual General Meeting at which they were elected until the conclusion of the third Annual General Meeting following their election; and
- (c) The remaining half of the number of General and Industry Sector Directors hold office from the conclusion of the Annual General Meeting at which they were elected until the conclusion of the second Annual General Meeting following their election.

26.3. **Members**

- (a) Subject to provision of the guarantee described in clause 1.5, all "financial" funding stakeholders of the Company immediately before the adoption of the Constitution on 1 July 2016 will automatically become Members of the Company and the contributions they had made will be deemed to be Subscriptions which are fully paid up to 30 June 2016. The Board will determine what class of Members each financial funding stakeholder will fall into in accordance with this Constitution;
- (b) Any "unfinancial" funding stakeholders of the Company immediately before the adoption of this Constitution will not automatically become Members.
- (c) On and from 1 July 2016, to remain Members of the Company, the funding stakeholders must meet all eligibility requirements and pay any further Subscriptions provided for in this Constitution in the usual course.