

Constitution

of

NURSERY & GARDEN INDUSTRY NSW & ACT LIMITED

(ACN 001 075 574)

(ABN 36 001 075 574)

(A Company Limited By Guarantee)

November 2012

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1. NAME

1.1 The name of the company is Nursery & Garden Industry NSW & ACT Limited (hereinafter called "the Company").

2. COMPANY

2.1 The Company is a Not for Profit company limited by guarantee.

3. LEGAL CAPACITY AND POWERS

3.1 The Company:

- (a) Has the legal capacity and, subject to the provisions of the Act, all the rights, powers and privileges of a natural person;
- (b) Does not have the power to issue shares.

3.2 Subject to Article 3.3, the income and property of the Company must be applied solely towards the promotion of its objects and no portion may be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, to any Member.

3.3 The Company is not prevented from the payment in good faith of remuneration to any officer or employee of the Company or to any Director in return for any services actually rendered to the Company, for goods supplied in the ordinary course of business, from the payment of interest at a rate not exceeding the overdraft rate for the time being fixed by the Company's bankers for the amount in question, from the payment of reasonable rent for premises or from out-of-pocket expenses incurred by any Director while engaged on Company business.

3.4 Members and Directors may not be employees.

3.5 The Company must not subscribe to, or support with its funds or amalgamate with, any Company or organisation, which does not prohibit the distribution of its income and property among its members to an extent at least as great as that imposed on the Company.

4. OBJECTS

4.1 The principal objects for which Company is established are to facilitate the successful growth of the nursery and garden industry in New South Wales and the Australian Capital Territory by:

- (a) Advancing opportunities for increased profitability of Members through promotion of their business activities;
- (b) Offering networking opportunities for Members;
- (c) Providing education and skills development training targeted towards the specific needs of the Industry;
- (d) Providing a range of Member services and programs;
- (e) Supporting Member and Industry development through communication and training on workplace health and safety and employment legislation;

- (f) To enter into any arrangements with any Government or authority, federal, state, local or otherwise that may seem conducive to the Company's objects or any of them; and to obtain from any such Government or authority any rights, privileges and concessions which the Company thinks it desirable to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.
- (g) In furtherance of the objects of the Company to buy, sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the assets property and rights of the Company.
- (h) In furtherance of the objects of the Company to amalgamate with any companies, institutions, societies or associations having objects altogether or in part similar to those of the Company and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as that imposed upon the Company under or by virtue of Article 3.2 of this Constitution.
- (i) To do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the Company.

5. MEMBER CONTRIBUTION

5.1 The liability of the Members is limited.

5.2 Each Member undertakes to contribute an amount as may be required not exceeding \$1.00 to the property of the Company in the event of the Company being wound up:

- (a) at a time when that person is a Member; or
- (b) within one year of the time that person ceased to be a Member,

for:

- (c) payment of the debts and liabilities of the Company contracted before that person ceased to be a Member;
- (d) payment of the costs, charges and expenses of winding-up the Company; and
- (e) adjustment of the rights of the contributors amongst themselves.

6. REPLACEABLE RULES

6.1 Except where the contrary intention appears in this Constitution, an expression in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act has the same meaning as in the provision of the Act.

6.2 The replaceable rules referred to in the Act are displaced by this Constitution.

7. DEFINITIONS

In this Constitution:

“Act” means the Corporations Act 2001 (Commonwealth);

“AGM” means the Annual General Meeting of Members;

“Article” means an article of this Constitution;

“Board” means the board of Directors of the Company, which is constituted by the persons who hold office as Directors, from time to time;

“Business Day” means a day except a Saturday, Sunday or public holiday;

“Directors” mean the directors of the Company for the time being;

“Disciplinary Committee” means a committee established by the Board to hear any complaints brought by or against any Member;

“Expulsion Event” means any behaviour which may lead to the expulsion or suspension of a Member as per article 10.9.1;

“Effective Date” means the date on which the Company is incorporated;

“Fees” means a fee or levy payable by Members as determined by Members from time to time in General Meeting;

“Financial Member” means a member of the Company whose membership subscription is current;

“General Meeting” means a meeting of the Members of the Company;

“Industry” means retail nurseries and garden centres, wholesale and production nurseries, allied traders, institutions, nursery consultants, landscapers and garden care operators;

“Industry Business” means any person which carries on business in either New South Wales or the Australian Capital Territory and who are responsible for and predominantly engaged in the Industry;

“Legal Costs” of a person means legal costs incurred by that person in defending an action for a Liability of that person;

“Liability” of a person means a liability incurred by that person as an officer of the Company or a subsidiary of the Company;

“Member” means a person whose name is entered in the Register as a Member of the Company;

“Member By Laws” means the document containing the rights and responsibilities relating to Membership of the Company;

“Member Category” means a category of Member approved by the Board and defined in the Member By Laws;

“Month” shall mean a calendar month;

“Notice” means a notice given pursuant to, or for the purpose of, this Constitution or the Act;

“Prescribed Notice” means 21 days or any shorter period of notice for a meeting allowed under the Act;

“Register” means the register of Members kept under the Act;

“Regional Groups” means a network of Members relevant to a geography within the State approved by the Board. These Members will undertake such activities as approved by the Board at the relevant time and will provide a forum for liaison and coordination between the Board and Members in those specific regions.

“Registered Office” means the registered office of the Company;

“Relevant Officer” means a person who is, or has been, a Director or Secretary;

“Resolution” means a resolution other than a special resolution;

“Secretary” means any person appointed to perform the duties of Secretary of the Company;

“Special General Meeting” means a meeting of Members convened in accordance with Article 12 of this Constitution. Each resolution to be passed at a Special General Meeting shall be a Special Resolution;

“Special Interest Group” means a network of Members relevant to a specific common interest within the State approved by the Board. These Members will undertake such activities as approved by the Board at the relevant time and will provide a forum for liaison and coordination between the Board and Members in those specific interest groups.

“Special Resolution” means a resolution:

- (a) of which notice has been given; and
- (b) that has been passed by at least 75% of the eligible votes cast.

“State” means the state of New South Wales and territory of Australian Capital Territory.

8. INTERPRETATION

8.1 In this Constitution:

- (a) a reference to a meeting of Members includes a meeting of any category of Members;
- (b) a Member is taken to be present at a meeting of Members if the Member is present in person; or
- (c) a reference to a notice or document in writing includes a notice or document given by fax, email or any other form of written communication.

8.2 In this Constitution, headings are for convenience only and do not affect interpretation and unless the context indicates a contrary intention:

- (a) a reference to a function includes a reference to a power, authority or duty;
- (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- (c) words importing the singular include the plural (and vice versa);
- (d) words indicating a gender include every other gender;
- (e) the word “person” includes an individual, the estate of an individual, a corporation, unincorporated enterprise, sole trader, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(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; and

(g) the word “includes” in any form is not a word of limitation.

8.3 Unless the context indicates a contrary intention, in this Constitution:

(a) a reference to an Article is to an article of this Constitution; and

(b) a reference to this Constitution, is to this Constitution (and where applicable any of its provisions) as modified or repealed from time to time.

8.4 Unless the context indicates a contrary intention, in this Constitution, a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it.

8.5 Unless the context indicates a contrary intention, in this Constitution:

(a) an expression that deals with a matter dealt with by a provision of the Corporations Act has the same meaning as in that provision; and

(b) an expression that is defined in the Act has the same meaning as in that section.

8.6 Expressions referring to “writing” shall unless the contrary intention appears, be construed as including references to printing, lithography, photography, electronic, digital and other modes of representing or reproducing words in a visible form.

9. EXERCISE OF POWERS

9.1 Where this Constitution confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty must be performed, from time to time, as the occasion requires.

10. MEMBERS

10.1 Member Categories

10.1.1 The Members of the Company shall consist of persons whose application for membership has been approved by the Board.

10.1.2 Members will be assigned a Member Category once their application for membership has been approved. The categories are defined in the Member By Laws. The Board may from time to time reduce or create additional categories of Member.

10.2 Register of Members

10.2.1 A register of Members must be kept and contain:

(a) the name and relevant contact details of each Member;

(b) the name and relevant contact details of the nominated representative of each corporate Member

(c) the date on which each Member was admitted to the Company;

- (d) the Member Category; and
- (e) if applicable, the date of, and reason(s) for, resignation or termination of membership.

10.2.2 The register of Members may be inspected by a Member giving to the Secretary seven (7) days' notice in writing or such lesser time to which the Secretary agrees.

10.3 **Application for Membership**

- 10.3.1 The Members are any other persons the Board admit to membership who are committed to contributing to achievement of the Company's Objects.
- 10.3.2 Every applicant for membership of the Company must apply in the form and manner and shall be required to meet certain criteria as determined by the Board from time to time and set forth in the Member By Laws published by the Company
- 10.3.3 The Board may decide to create eligibility criteria and categories of membership with the same or differing rights or privileges.
- 10.3.4 After the receipt of an application for membership made in accordance with this constitution, the Board, or a delegate approved by the Board, must consider the application and decide whether to admit or reject the admission of the applicant. The Board need not give any reason for rejecting an application.
- 10.3.5 The Secretary shall, on advice from the Board of acceptance of the Member application, enter the applicant's name in the Register of Members and, upon the applicant's name being so entered, the applicant becomes a Member of the Company.
- 10.3.6 A Member having any change of directors, change of name or trading name, or any change in beneficial ownership of shares so that there is a change in the controlling interest of such Member, shall be required to notify the Company of such change in writing within one (1) month and the Board may at its absolute discretion require such Member to lodge a new membership application and to meet the membership criteria then applicable, or take such other action as it at its sole discretion sees fit.

10.4 **Representative**

- 10.4.1 Each Member which is a company or legal person must be represented at meetings of the Company by:
 - (a) its nominated representative, a record of which is held by the Company; or
 - (b) in their absence, by a duly nominated proxy.
- 10.4.2 Each Member must notify the Secretary of the name and contact details of its nominated representative under Article 10.4.1. A Member must, if it wishes to change its nominated representative, notify the Secretary in writing accordingly of the name and contact details of its newly nominated representative.

10.5 Membership not transferable

10.5.1 The rights and privileges of any Member shall be personal to the Member and are not transferable.

10.6 Subscriptions

10.6.1 The Board shall from time to time determine the annual subscription for each Member which shall be either a fixed fee or for certain categories of membership may be based upon criteria as determined by the Board.

10.6.2 All annual subscriptions shall become due and payable in advance on the first day of July in each year or at such other time as the Board shall determine from time to time.

10.7 Ceasing to be a Member

10.7.1 A person will cease to be a Member of the Company upon the occurrence of any of the following events:

- (a) the Member resigns in accordance with Article 10.8 ;
- (b) the Member is expelled under Article 10.9;
- (c) if the Member is a natural person, upon the death of the Member;
- (d) if the person is a corporate body, as per Article 10.7.5;
- (e) If any Member of the Company fails to pay the annual subscription or any other monies due to the Company within one (1) month after the same becomes due and upon having been given notice in writing by the Secretary to pay the same, it remains unpaid for a further seven (7) days after such written notice;
- (f) Pursuant to disciplinary action by the Board under Article 10.9; or
- (g) If in the opinion of the Board the Member has ceased to carry on business of a nature being eligible for membership or has otherwise ceased to comply with the criteria for membership set forth in the Member By Laws or has contravened Article 10.3.6; or

10.7.2 The Secretary shall make an appropriate notation in the register of Members upon a person ceasing to be a Member of the Company.

10.7.3 The estate of a deceased Member is not released from any liability in respect of that person being a Member.

10.7.4 Any resignation or other termination or suspension of membership shall not relieve a Member of their liability to pay any money due to the Company.

10.7.5 Members, who are corporate bodies, shall cease automatically as follows:

- (a) In the case of a partnership, upon dissolution of the partnership or if a Receiver of a partnership assets is appointed.

- (b) In the case of a company or other business entity upon the appointment of a Liquidator or Provisional Liquidator or if a Receiver or Receiver and Manager of its assets is appointed or if it enters into any scheme or arrangement or composition with its creditors or is placed under official management or other form of insolvency administration.

10.7.6 On the termination or suspension of membership for any reason neither the Member nor the representative of such Member shall have any interest in the Company or its property, nor shall such Member or representative have or be entitled to claim any rights or privileges of membership of the Company.

10.8 Resignation

10.8.1 A Member may resign as a Member by giving the Company not less than one (1) months' notice in writing.

10.8.2 Unless the notice provides otherwise, a resignation by a Member takes effect immediately on the giving of that notice to the Company.

10.8.3 Any Member so resigning shall be liable for any outstanding subscriptions which may be recovered as a debt due to the Company.

10.8.4 The Company may retain the unexpired portion of a resigned Member's annual membership subscription.

10.9 Expulsion or suspension

10.9.1 The Board shall have the power to either expel any Member or declare their membership terminated or suspend the membership either for a fixed period or indefinitely or to impose a fine upon or issue a reprimand to any Member if in the opinion of the Board the Member has committed any of the following Expulsion Events:

- (a) The Member has committed a breach of the Constitution or of any Member By Law published from time to time by the Company.
- (b) The Member has acted in a manner detrimental or prejudicial to the interests of the Company or which may tend to bring the Company into contempt or disrepute.
- (c) The Member obtained membership by improper means or without the required qualifications.
- (d) The Member is not or is no longer desirable as a Member of the Company.
- (e) The Member has commenced legal proceedings against the Company.

10.9.2 Any allegation of misconduct by a Member which appears to involve an Expulsion Event shall be first brought to the attention of the Disciplinary Committee, in writing, to consider what action, if any, should be taken.

10.9.3 Subject to Article 10.9.2, the Board may resolve to:

- (a) Issue the Member with a fine or reprimand ; or

- (b) Expel a Member; or
 - (c) Suspend a Member;
 - i. For such period; and
 - ii. From enjoying such rights and privileges of Membership;
- as the Board may determine;
- if:
- (d) An Expulsion Event occurs in respect of the Member; and
 - (e) The Disciplinary Committee gives that Member at least 21 days' notice in writing:
 - i. Stating the Expulsion Event and details of any possible penalty, suspension or expulsion of membership;
 - and
 - ii. Informing the Member of his, her or its rights under Article 10.9.4

10.9.4 Before the Board may pass any resolution under Article 10.9.3

- (a) The Member must first of all have been notified in writing by the Company's Disciplinary Committee that it is investigating the matters concerning the Member that may become the subject of an Expulsion Event;
- (b) The Disciplinary Committee may determine the manner in which it seeks to clarify the matter prior to contacting the Member;
- (c) The Member is then to be informed in writing of the particulars of the matter under consideration by the Disciplinary Committee and must be invited to make submissions in writing and given 21 days to do so;
- (d) The Disciplinary Committee may seek from the Member further information as specified in writing and provided the Member is given 21 days in which to comply;
- (e) The Disciplinary Committee must then make a written recommendation after its consideration of all the material before it.

10.9.5 In the event that the recommendation includes the expulsion or suspension of the Member, then a copy of that recommendation must be forwarded both to the Board and to the Member concerned. Otherwise the copy of the recommendation is forwarded to the Chief Executive Officer and the Member.

10.9.6 The Member who is the subject of a recommendation that involves any penalty, including expulsion or suspension, may lodge an appeal within 21 days of receiving written notice of the recommendation by delivering a written notice of appeal to the President setting out in detail the grounds of appeal. If a notice of

appeal is not received by the President within this period the Board may proceed as outlined in Article 10.9.3.

10.9.7 If a notice of appeal is received within the 21 day period the President must:

- (a) Convene a meeting of the Board to be held within 28 days;
- (b) Ensure that the Member who is the subject of the recommendation receives the same notice of the meeting as the Board with written particulars of the matter to be considered and must be invited to attend and be heard;
- (c) Inform the Member that as well as being present at the meeting they may be accompanied by a representative but must advise the President at least seven (7) days before the meeting, whether they will be accompanied at the meeting, and the capacity of the representative;
- (d) Advise the Member that at the Board meeting the Member may make submissions in writing or orally and must be given an opportunity to respond to any matters raised at the Board meeting.

10.9.8 After the Member has addressed the Board, all submissions have been heard and received and the Member has been given an opportunity to respond, the Member and any accompanying person must leave the meeting and the Board will consider its position and may pass a resolution in accordance with Article 10.9.3.

10.9.9 Where a resolution is passed under Article 10.9.3, the Company must give the Member, notice ("Disciplinary Notice") in writing of any penalty, within 10 Business Days of the Board resolution.

10.9.10 A resolution under Article 10.9.3 takes effect on the date of the resolution.

11. ANNUAL GENERAL MEETINGS

11.1 The Board shall call an Annual General Meeting in accordance with the Act and the Constitution.

11.2 The Annual General Meeting shall be held within five months after the end of its financial year.

11.3 The order of the business at the meeting shall be:

- (a) the confirmation of the minutes of the previous Annual General Meeting and of any Special General Meeting held since that meeting;
- (b) the consideration of the accounts and reports of the Directors and the Auditor's report; including any borrowings
- (c) the confirmation of the election of Board members; and
- (d) any other business requiring consideration by the Company in General Meeting.

11.4 All business at an Annual General Meeting other than consideration of the accounts, balance sheets and the reports of the Board and auditors, the election of office bearers and

the appointment of the auditors, and all business at any other General Meeting, constitutes special business.

- 11.5 The chair of an Annual General Meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company.

12. SPECIAL GENERAL MEETINGS

- 12.1 The Board may call a Special General Meeting of the Company at any time.
- 12.2 A Special General Meeting may be requisitioned in writing by Members of the Company. The requisition must state the purpose of the meeting and shall be signed by not less than 10% of the total number of Members of the Company. Within one (1) month of the receipt of the requisition, the Board shall convene a Special General Meeting for the purpose specified in the requisition.
- 12.3 If a Special General Meeting is not convened within one (1) month, as required by sub-Article 12.2 above, the requisitionists may convene a Special General Meeting. The reasonable expenses of convening and conducting such a meeting shall be borne by the Company.

13. NOTICE OF GENERAL MEETINGS

- 13.1 Subject to sub-Article 13.2 below, at least 21 days' Notice of any General Meeting shall be given to Members. The Notice shall set out where and when the meeting will be held, and particulars of the nature and order of the business to be transacted at the meeting.
- 13.2 Notice of a meeting at which a Special Resolution is to be proposed shall be given at least 21 days prior to the date of the meeting.
- 13.3 A Notice may be given by the Company to any Member by serving the Member with the Notice personally, or by sending it by post, email or fax to the address appearing in the register of Members.
- 13.4 Where a Notice is sent by post:
- (a) the service is effected by properly addressing, prepaying and posting a letter or packet containing the Notice; and
 - (b) unless the contrary is proved, service will be taken to have been effected at the time at which the letter or packet would be delivered in the ordinary course of post.

14. GENERAL MEETINGS BY TECHNOLOGY

- 14.1 The contemporaneous linking together by telephone or other electronic means of a sufficient number of the Members in person, to constitute a quorum constitutes a meeting of the Members, provided each Member has a reasonable opportunity to participate at the meeting.
- 14.2 All the provisions in this constitution relating to meetings of the Members apply, so far as they can and with any necessary changes, to meetings of the Members by telephone or other electronic means.

- 14.3 A Member who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- 14.4 A meeting by telephone or other electronic means is taken as held at the place decided by the Chairperson of the meeting, as long as at least one of the Members involved was at that place for the duration of the meeting.

15. PROCEEDINGS AT GENERAL MEETINGS

- 15.1 A General Meeting must be held at a reasonable time and place.
- 15.2 A General Meeting may be held at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- 15.3 Members shall be entitled to be present at General Meetings.
- 15.4 A quorum for the transaction of business at any General Meeting shall be twenty (20) Members entitled to vote being present personally or by proxy.
- 15.5 If within 30 minutes after the time appointed for the meeting a quorum of Members is not present, a meeting convened upon the requisition of Members shall lapse. In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place, where possible, and if at such adjourned meeting a quorum is not present within 30 minutes of the time appointed for the meeting the Members present shall form a quorum.
- 15.6 Subject to Sub-Article 15.7 below, the President shall preside as chair at a General Meeting of the Company.
- 15.7 If the President is not present within fifteen minutes after the time appointed for holding the meeting, or he or she is present but declines to take or retires from the chair, Members may choose one of their own number to be the chair of that meeting.

16. ADJOURNMENT OF GENERAL MEETING

- 16.1 The chair may adjourn the meeting from time to time but no business shall be transacted at any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place.
- 16.2 When a General Meeting is adjourned, new Notice of the resumed General Meeting must be given if the General Meeting is adjourned for one month or more.
- 16.3 Except as provided by Article 16.2, it is not necessary to give any Notice of an adjournment or of the business to be transacted at an adjourned General Meeting.
- 16.4 Only unfinished business is to be transacted at a meeting resumed after an adjournment.
- 16.5 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

17. VOTING AT GENERAL MEETINGS

- 17.1 Members may vote using electronic or other technology as set out in the Member By Laws,
- 17.2 Subject to the Constitution, every Member of the Company eligible to vote has only one vote at a meeting of the Company.
- 17.3 Subject to the Constitution, a question for decision at a General Meeting, other than a Special Resolution, must be determined by a majority of Members eligible to vote who vote in person or, where proxies are allowed, by proxy, at that meeting.
- 17.4 At any General Meeting a Resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is demanded before or on the declaration of the result of the show of hands:
- (a) by the chair of the meeting; or
 - (b) at least two (2) Members present in person or by proxy.
- 17.5 A Member being a legal person shall be entitled to appoint one person, who is not already an individual Member of the Company, to represent it at a particular General Meeting or at all General Meetings of the Company. That person shall be appointed by the Member and the Secretary should be advised in writing. Such a person shall be deemed to be a Member of the Company for all purposes until the authority to represent the Member is revoked.
- 17.6 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

18. POLL AT GENERAL MEETINGS

- 18.1 If a poll is demanded by the chair of the meeting or at least two (2) Members, it must be conducted in a manner specified by the person presiding and the result of the poll is the resolution of the meeting on that question.
- 18.2 A poll demanded for the election of a person presiding or on a question of adjournment must be taken immediately, but any other poll may be conducted at any time before the close of the meeting.

19. PROXIES

A Member shall be entitled to appoint in writing a natural person who is also a Member of the Company to be their proxy, and attend and vote at any General Meeting of the Company.

20. APPOINTING DIRECTORS

- 20.1 The minimum number of Directors is seven (7). The maximum number of Directors is to be fixed by the Board, but may not be more than ten (10), unless the Company in General Meeting resolves otherwise. The Board must not determine a maximum which is less than the number of Directors in office at the time the determination takes effect.
- 20.2 The process for nomination and election to the Board is as per the Member By Laws;
- 20.3 The Board may appoint any individual as a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided:

- (a) the number of directors does not exceed the maximum number fixed under rule 20.1; and
- (b) before appointing the Director, the proposed Director signs a consent to act as a director.

21. RETIREMENT OF DIRECTORS BY ROTATION

- 21.1 A Director appointed by the Board under Article 20.3, holds office only until the conclusion of the next Annual General Meeting following his or her appointment.
- 21.2 At every Annual General Meeting at least half of the elected Directors, being selected from those Directors longest in office since their last election, are required to retire and if eligible, are entitled to stand for election.
- 21.3 No Director may hold office without re-election beyond the second Annual General Meeting following the Annual General Meeting at which the Director was elected or re-elected.
- 21.4 A Director retiring from office is eligible for re-election subject to a maximum six (6) years as a Director, unless the maximum term is varied for a particular Director by the Board. The total number of years that any Director is able to hold office is 12 years. The total number of years can be served in any manner of multiple non-consecutive terms.
- 21.5 The retirement of a Director from office and the re-election of the Director or the election of another person to that office (as the case may be) takes effect at the conclusion of the meeting at which the retirement and re-election or election occurs.

22. THE BOARD

- 22.1 The Board shall comprise of seven (7) elected Members. Directors shall be elected by ballot of all Members eligible to vote in accordance with the Member By Laws.
- 22.2 The elected Board is able to appoint up to three (3) Directors so that the maximum number of Directors on the Board is ten (10).
- 22.3 The conditions for being eligible for appointment to the Board is are documented in the Member By Laws. As much as possible, the composition of the Board should broadly represent the Objects of the Company.
- 22.4 A Board meeting shall be held within one month of the Annual General Meeting of the Company in which the elected Board members then in office shall elect from their number by ballot, the President of the Company. If at any time the President position is vacated a Board meeting shall be held immediately in which the elected Board members still in office shall elect from their number by ballot a replacement.
- 22.5 The term of office of the President shall be two years with each President limited to a maximum of two (2) consecutive terms.
- 22.6 All Board members shall take office with effect from the Annual General Meeting of the Company in the year of their election and shall hold office for a term of two (2) years and shall be eligible for re-election in accordance with Article 21.

22.7 In the event of a casual vacancy occurring in the membership of the Board, the Board shall, where possible, appoint a Member to fill the vacancy and the Member so appointed shall hold office in accordance with Article 21.1.

23. CASUAL VACANCIES

For the purposes of the Constitution, a casual vacancy on the Board occurs in the event of any of the following:

- (a) if a Board member dies;
- (b) if a Board member ceases to be a Member;
- (c) ceases to be a Director by virtue of the Law;
- (d) becomes prohibited from being a director of a company by reason of any order made under the Act;
- (e) becomes bankrupt or makes any arrangement or composition with creditors generally;
- (f) if a Board member resigns their office by Notice in writing given to the Secretary;
- (g) if a Board member is removed from office pursuant to Article 24;
- (h) if a Board member becomes of unsound mind, or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health or is otherwise permanently incapacitated by ill health;
- (i) If absent without permission of the Board from more than twenty five (25) percent of meetings of the Board held during any one calendar year;
- (j) holds any office of profit or gains any financial advantage from the Company without prior full disclosure to and approval of the Board;
- (k) is directly or indirectly interested in any contracted or proposed contract with the Company provided, however, that they shall not vacate their office by reason of being a member of any corporation which has entered or proposes to enter into a contract with the Company if such corporation is among the class of companies referred to in the proviso of Article 3 of the Constitution of the Company and if they shall have declared the nature of their interest in the manner required by the Law; or
- (l) Ceases to be a Member of the Company or a nominated representative of a Member of the Company.

24. REMOVAL OF A BOARD MEMBER

24.1 The Company in a General Meeting may, by Resolution, remove any Board member from the office of Board member before the expiration of that Board member's term of office and may, by Resolution, appoint another person to hold office until the expiration of the term of office of the Board member so removed.

24.2 Where a Board member to whom a proposed resolution referred to in Sub-Article 24.1 hereof makes representations in writing to the Secretary and requests that the representations be notified to the Members, the Secretary may send a copy of the representations to each Member, or, if they are not so sent, the Board member is entitled

to require that the representation be read out at the meeting at which the Resolution regarding his or her removal is considered.

25. PROCEEDINGS OF BOARD

- 25.1 The Board shall meet at least six (6) times, including meetings by teleconference, in each period of twelve months at such place and time or in such manner as the Board may determine.
- 25.2 Additional meetings of the Board may be convened by the President or by any two (2) Board members.
- 25.3 Oral or written Notice of a Board meeting shall be given by the Secretary to each Board member at least forty-eight (48) hours (or such other period as may be unanimously agreed upon by the Board members) before the time appointed for the holding of the meeting.
- 25.4 Notice of the meeting given pursuant to Sub-Article 25.3 shall specify the general nature of business to be transacted at the meeting. No business other than that business shall be dealt with at the meeting, except other business which the Board members present unanimously agree to deal with.
- 25.5 A quorum for a meeting of the Board shall be 50% plus one (1) member.
- 25.6 If the total number of members of the Board is not enough to make up that quorum, then the Board may only act for the purpose of increasing the number of members of the Board to make up a quorum or for convening a Board meeting.
- 25.7 The President shall preside as chair at every meeting of the Board, or if he is not present within ten (10) minutes after the time appointed for holding the meeting the Board members may choose one of their number to be chair of the meeting
- 25.8 A decision of the Board must be passed by a majority of the votes cast by the members of the Board entitled to vote on the Resolution. Each Director has only one (1) vote per Resolution. In case of an equality of votes the Resolution is lost.
- 25.9 A member of the Board having a pecuniary interest in a contract with the Company must disclose that interest to the Board as required by the Act. A member of the Board is not entitled to vote in respect of any contract or proposed contract with the Company in which he or she is in any way, whether directly or indirectly, interested or in respect of any matter arising out of such a contract or proposed contract and, if he or she votes in contravention of this Article, his or her vote shall not be counted.
- 25.10 The members of the Board may pass a Resolution without a Board meeting being held if all the members of the Board entitled to vote on the Resolution sign a document containing a statement that they are in favour of the Resolution set out in the document.
- 25.11 Separate copies of a document may be used for signing by the members of the Board if the wording of the Resolution and statement is identical in each copy.
- 25.12 The Resolution is passed when the last the member of the Board signs.
- 25.13 Passage of such a Resolution must be recorded in the minutes of the next Board meeting.

26. POWERS AND DUTIES OF THE BOARD

- 26.1 The affairs of the Company must be managed by or under the direction of and controlled exclusively by the Board, which in addition to any powers and authorities conferred by the Constitution, may exercise all such powers and do all such things as are within the objects of the Company, and are not, by the Act or the Constitution, required to be done by the Company in General Meeting.
- 26.2 The authority of the Board in relation to sale of Company assets and borrowing capacity is as per the Member By Laws.
- 26.3 The Board may make and amend the Members By Laws from time to time to regulate the affairs of the Company provided they are not inconsistent with this Constitution.
- 26.4 The appointment, discharge and arrangement of the duties and powers of the Chief Executive Officer shall be the responsibility of the Board who shall determine the remuneration and terms of employment of such Chief Executive Officer.
- 26.5 All cheques, promissory notes, drafts, bills of exchange, electronic payments and funds transfers and other negotiable instruments, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any 2 Directors or in accordance with the delegated authority of the Board.
- 26.6 The members of the Board may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the members of the Board), for such period and subject to such conditions as they think fit.
- 26.7 Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the members of the Board think appropriate and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him or her.
- 26.8 All acts done by any meeting of the Board or of a committee of the Board or by any person acting as a member of the Board are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a member of the Board or a member of the committee, or to act as a member of the Board, or that a person so appointed was disqualified, is valid as if the person had been duly appointed and was qualified to be a member of the Board or to be a member of the committee.

27. BOARD MEETINGS BY TECHNOLOGY

- 27.1 The contemporaneous linking together by telephone or other electronic means of a sufficient number of the Board in person, to constitute a quorum constitutes a meeting of the members, provided each Director has a reasonable opportunity to participate at the meeting.
- 27.2 All the provisions in this constitution relating to meetings of the Board apply, so far as they can and with any necessary changes, to meetings of the Members by telephone or other electronic means.
- 27.3 A Director who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.

- 27.4 A meeting by telephone or other electronic means is taken as held at the place decided by the Chairperson of the meeting, as long as at least one of the Directors involved was at that place for the duration of the meeting.

28. DELEGATION

- 28.1 The Board may delegate any of its powers to a committee of the Board consisting of such members as the Board decides.
- 28.2 The delegation must be recorded in the minute book.
- 28.3 The Board may delegate to the Secretary or any other person the exercise of any of its functions, other than this power of delegation.

29. COMMITTEES AND WORKING GROUPS

- 29.1 Each Director may be asked to participate in one or more committees or working groups.
- 29.2 The Board will document and approve the terms of reference, including the composition and any delegated authority, for each committee or working group.
- 29.3 A committee or working group must exercise the powers delegated to it in accordance with any directions of the Board.
- 29.4 A committee or working group may meet and adjourn as it thinks proper.
- 29.5 Questions arising at a meeting of a committee or working group shall be determined by a majority of votes of the members present and voting.
- 29.6 In the case of an equality of votes, the Resolution is lost

30. AUDIT COMMITTEE

The Board shall have responsibility for all financial matters of the Company. The Board will appoint the chair of an Audit Committee. The Audit Committee may be delegated certain responsibilities, as determined by the Board, in relation to financial reporting and managing financial controls and risks.

31. COUNCIL

- 31.1 The Council is comprised of one nominee from each Regional Branch andr Special Interest Group so long as the nominee is not a Board Member;
- 31.2 The terms of reference for the Council will be determined by the Board;
- 31.3 The Council shall meet at least once prior to the AGM each year. The terms of reference shall include but not be limited to any item that the Board refers for consideration, feedback for strategic planning purposes, consideration of use of surplus funds, and review and general feedback from Members;
- 31.4 The Board may appoint the Council to act as a mediator in disputes in accordance with Article 10.9 .

32. MINUTES

- 32.1 The Company must keep minute books in which it records:
- (a) proceedings and Resolutions of General Meetings;
 - (b) proceedings and Resolutions of Board meetings (including meetings of a committee of the Board);
 - (c) Resolutions passed by members of the Board without a meeting.
- 32.2 The minutes must be approved in accordance with the Act.
- 32.3 Where minutes are entered and signed they shall, until the contrary is proved, be evidence that the meeting was convened and duly held and that all decisions and appointments made at a meeting shall be deemed to be valid.
- 32.4 The Company will keep an electronic copy of all minutes which will be secured to ensure that any modifications are tracked, date stamped and appropriately authorised.

33. SECRETARY

- 33.1 The members of the Board appoint the Secretary. It is not necessary for the Secretary to be a Member or employee of the Company.
- 33.2 The Secretary must consent in writing to holding the position of Secretary.
- 33.3 The Secretary has and may exercise such functions as are conferred or imposed on the Secretary by or under the Constitution.
- 33.4 The same person may be both a member of the Board and the Secretary.
- 33.5 The Board may, from time to time, appoint a person to act as Secretary during the illness or absence of the Secretary, and the person, while so acting, has and may exercise all the functions of the Secretary and is taken to be the Secretary.
- 33.6 The Secretary may resign by giving written notice of the resignation to the Company.

34. CHIEF EXECUTIVE OFFICER

- 34.1 The Board may, but is not compelled to, appoint a Chief Executive Officer with such powers and responsibilities and to perform such functions and duties as the Board determines from time to time. The appointment of a Chief Executive Officer shall be for such term and upon such conditions as the Board thinks fit, and the Board shall have the absolute power to terminate such appointment.
- 34.2 The Chief Executive Officer may also be known as the Executive Officer, General Manager or any other title determined by the Board from time to time. The Chief Executive Officer of the Company has authority to bind the Company pursuant to the Act.

35. AUDITORS

- 35.1 Shall be appointed by Members at a General Meeting.
- 35.2 If the auditor or his or her representative is at the meeting, the chair of an Annual General Meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.
- 35.3 The auditor is entitled to attend any General Meeting.
- 35.4 The auditor is entitled to be heard at the General Meeting on any part of the business of the General Meeting that concerns the auditor in their capacity as auditor.
- 35.5 The auditor is entitled to be heard even if:
- (a) the auditor retires at the General Meeting; or
 - (b) the General Meeting passes a Resolution to remove the auditor from office.
- 35.6 The auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any General Meeting.

36. FINANCIAL REPORTS AND PROPERTY

- 36.1 The financial year of the Company shall be the period ending on 30th June each year.
- 36.2 The Board must apply the income and property of the Company solely towards the promotion of the objects of the Company as set forth in this Constitution and none of it may be paid or transferred, directly or indirectly, to Members, either by dividend, bonus or otherwise.
- 36.3 The Board may be paid a salary or fees or receive any remuneration or other benefit in money or money's worth from the Company as approved at an Annual General Meeting.
- 36.4 The Board in good faith may authorise:
- (a) the payment of:
 - (i) reasonable and proper remuneration or fees to any Member or employee for any goods or services provided or rendered to the Company;
 - (ii) any debt or any reasonable and proper fees to any member of the Board under a contract between the Company and that member of the Board for the provision of goods or services which are outside the scope of the ordinary duties of a director;
 - (iii) reasonable and proper rent for premises demised or let to the Company by any Member (including a member of the Board);
 - (iv) interest at a rate not exceeding the lowest rate paid for the time being by the Company's bank in respect of term deposits on money borrowed from any Member (including a member of the Board);

- (b) the reimbursement of any member of the Board for out-of-pocket expenses properly incurred:
 - (i) in attending and returning from Board meetings or any meetings of committees of members of the Board;
 - (ii) in attending any General Meetings; and
 - (iii) in connection with the Company's business.

- 36.5 All payments to Directors must be approved in accordance with the delegated authority of the Board.

- 36.6 The Company must keep written financial records which:
 - (a) correctly record and explain its transactions and financial position and performance; and
 - (b) would enable true and fair financial statements to be prepared and audited.

- 36.7 A properly qualified auditor or auditors is to be appointed to examine the financial records.

- 36.8 The Company must report electronically or where requested in writing by the Member, send a paper copy to Members for a financial year by either:
 - (a) sending Members copies of:
 - (i) the financial report for the year; and
 - (ii) the Board's report for the year; and
 - (iii) the auditor's report on the financial report; or
 - (b) sending Members a concise report for the year that complies with Article 36.9.

- 36.9 A concise report for a financial year consists of:
 - (a) a concise financial report for the year drawn up in accordance with accounting standards made for the purposes of this Article; and
 - (b) the Board's report for the year; and
 - (c) a statement by the auditor:
 - (i) that the financial report has been audited; and
 - (ii) whether, in the auditor's opinion, the concise financial report complies with the accounting standards made for the purposes of Article 36.6(a); and
 - (d) a copy of any qualification in, and of any statements included in, the auditor's report on the financial report; and
 - (e) a statement that the report is a concise report and that the full financial report and auditor's report will be sent to the Member free of charge if the Member asks for them.

- 36.10 The Company must report to Members under Article 36.8 by the earlier of:
- (a) 30 days before the next Annual General Meeting after the end of the financial year; or
 - (b) five (5) months after the end of the financial year.
- 36.11 A Member may request the Company:
- (a) not to send them the material required by Article 36.8; or
 - (b) to send them a full financial report and the Board's report and auditor's report.
- 36.12 A request may be a standing request or for a particular financial year. The Member is not entitled to a report for a financial year earlier than the one before the financial year in which the request is made.
- 36.13 The time for complying with a request under Article 36.11(b) is:
- (a) 21 days after the request is received; or
 - (b) the deadline for reporting under Article 36.12;
- whichever is later.
- 36.14 A full financial report, the Board's report and auditor's report are to be sent free of charge unless the Member has already received a copy of them free of charge.
- 36.15 A Member has a right of access to the financial records at all reasonable times.

37. BORROWING POWERS

- 37.1 Subject to this Article, the Company may borrow money from banks or other financial institutions upon such terms and conditions as the Board sees fit, and may secure the repayment thereof by charging the property of the Company.
- 37.2 Subject to the Act, the Company may invite and accept deposits of money from any person on such terms and conditions as may be determined by the Board from time to time.
- 37.3 All borrowings shall be reported to the subsequent Annual General Meeting.
- 37.4 The Board will delegate authority to an Investment Committee to manage matters relating to borrowing and receipt of funds and sale of Company Assets.

38. EXECUTION OF DOCUMENTS

- 38.1 The Company may execute a document if the document is signed by:
- (a) two members of the Board;
 - (b) a member of the Board and the Secretary.
- 38.2 Each executed document shall be recorded in a register of contracts of the Company.

- 38.3 The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with Articles 38.1, but this does not limit the ways in which the Company may execute a document (including a deed).
- 38.4 A member of the Board may sign an instrument even though the member of the Board is interested in the contract or arrangement to which the instrument relates.
- 38.5 A person acting with the Company's authority and on its behalf can exercise the Company's power to sign, discharge and otherwise deal with contracts.

39. MEMBER BY LAWS

- 39.1 The Board may pass a Resolution making, altering or revoking a policy or procedure dealing with:
- (a) the rights or obligations of Members; or
 - (b) other matters;
- which are not specified by the Constitution or the Act. The policy and procedures are documented in the Member By Laws.
- 39.2 A policy or procedure, which, directly or indirectly, is inconsistent with a provision of the Constitution or the Act, is invalid.
- 39.3 Each Member is able, upon joining the Company, to receive either an electronic copy of, or to be given access via the Company's website to the Member By Laws. Members are to be advised of any changes in the Member By Laws.
- 39.4 The Board is the sole authority for interpreting the Member By Laws.

40. INDEMNITY

- 40.1 Every person who is or has been a Director, Secretary or principal executive officer of the Company is entitled to be indemnified, to the maximum extent permitted by law, out of the property of the Company against any liabilities for costs and expenses incurred by that person:
- (a) in defending any proceedings relation to that person's position with the Company, whether civil or criminal, in which judgement is given in that person's favour or in which that person is acquitted or which are withdrawn before judgement; or
 - (b) in connection with any administrative proceedings relating to that person's position with the Company, except proceedings which give rise to civil or criminal proceedings against that person in which judgement is not given in that person's favour or in which that person is not acquitted or which arise out of conduct involving a lack of good faith; or
 - (c) in connection with any application in relation to proceedings relating to that person's position in the Company, whether civil or criminal, in which relief is granted to that person under the Act by the court.
- 40.2 Every person who is or has been a Director, Secretary or principal executive officer of the Company is entitled to be indemnified, to the maximum extent permitted by law, out of the property of the Company against any liability to another person (other than the

Company) as such an officer unless the liability arises out of conduct involving a lack of good faith.

40.3 The Company may pay a premium for a contract insuring a person who is or has been a Director, Secretary or principal executive officer of the Company against:

- (a) any liability incurred by that person as such an officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of the Act; and
- (b) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal, and whatever their outcome.

41. DISSOLUTION AND WINDING UP

41.1 If upon the dissolution or winding-up of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatever, the same shall not be paid to or distributed among the Members, but shall be given or transferred to some other fund, authority or institution:

- (a) having objects similar to the objects of the Company;
- (b) which prohibits the distribution of its income and property to a similar extent to that imposed on the Company under Article 36.1; and
- (c) which is a fund, authority or institution approved by the Commissioner of Taxation of the Commonwealth of Australia as a fund, authority or institution covered by the Income Tax Assessment Act 1997 (as amended).

41.2 That fund, authority or institution may be determined by the Members at or before the time of dissolution, and insofar as effect cannot be given to such provision, then to some other charitable object which satisfies the criteria prescribed by Article 41.1.

42. NOTICE

42.1 A Notice may be given by the Company to any Member by sending it by post to the address for the Member in the register of Members or the last address of the person known to the Secretary or the alternative address, if any, nominated by the Member.

42.2 A Notice of a General Meeting sent by post is taken to be given 2 days after the letter is posted.

42.3 A Notice sent by fax, e-mail or other electronic means is taken to be given on the business day after it is sent.

43. COMPLIANCE

43.1 Every Member, Director, committee member and every other officer of the Company must comply with the provisions of this Constitution and the Member By Laws of the Company.

44. ADOPTION AND MODIFICATION OF CONSTITUTION

- 44.1 The Members may modify or repeal the Constitution, or a provision of the Constitution, by Special Resolution passed at either an Annual General Meeting or at a Special General Meeting.
- 44.2 A Notice of the proposed alterations must be provided by properly addressing, prepaying, and posting a letter to every Member at least 28 days prior to the date of the meeting.
- 44.3 Date of effect of adoption, modification or repeal of Constitution. A Special Resolution adopting, modifying or repealing the Constitution takes effect:
- (a) if no later date is specified in the resolution, then on the date on which the resolution is passed; or
 - (b) on a later date specified in, or determined in accordance with, the resolution.
- 44.4 The Company must send a copy of the Constitution to a Member within 21 days if the Member:
- (a) asks the Company, in writing, for the copy; and
 - (b) pays any fee (up to the prescribed amount) required by the Company.

45. TRANSITIONAL

- 45.1 The Company commences operations under this Constitution effective upon approval of the Constitution by the regulatory authority.

Adopted at Annual General Meeting 23/11/2012

Attested by:



Maree Curran
President