

**CONSTITUTION
OF
Tasmanian Chamber of Commerce
and Industry Limited**

Australian Company Number (ACN) 009 475 987
Australian Business Number (ABN) 77 009 475 987

A public company limited by guarantee

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Appendix A - Classes of Members

Preliminary

1. Name of the company

The name of the **company** is Tasmanian Chamber of Commerce and Industry Limited (the **company**).

2. Type of company

The **company** is a public company limited by guarantee.

3. Limited liability of members

The liability of members is limited to the amount of the guarantee in clause 4.

4. The guarantee

Each member must contribute an amount not more than \$1 (the **guarantee**) to the property of the **company**. If the **company** is wound up while the member is a member, or within 12 months after they stop being a member this contribution is required to pay for the:

- (a) debts and liabilities of the **company** incurred before the member stopped being a member; or
- (b) costs of winding up; or
- (c) the adjustment of the rights of the contributories among themselves.

5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 76 and 78.

Purposes and powers

6. Object

The **company's** object is to pursue the following purposes:

- (a) to improve Tasmania for all through the development of relevant policy, delivery of relevant products and the provision of a consistent and apolitical voice; and
- (b) the doing of any lawful thing incidental or conducive to the attainment of the basic object set out at clause 6(a) above.

7. Powers

Subject to clause 8, the **company** has the following powers, which may only be used to carry out its purpose(s) set out in clause 6:

- (a) the powers of an individual; and
- (b) all the powers of a **company** limited by guarantee under the **Corporations Act**.

8. Not-for-profit

- 8.1 The **company** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 75.

- 8.2 Clause 8.1 does not stop the **company** from doing the following things, provided they are done in good faith:
- (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **company**; or
 - (b) making a payment to a member in carrying out the **company's** purpose(s).

9. Amending the constitution

- 9.1 Subject to clause 9.2, the members may amend this constitution by passing a **special resolution**.
- 9.2 The members must not pass a **special resolution** that amends this constitution if passing it causes the **company** to no longer be a not-for-profit.

Members

10. Membership and register of members

- 10.1 The members of the **company** are:
- (a) **initial members**; and
 - (b) any other person that the directors allow to be a member, in accordance with this constitution.
- 10.2 The **company** must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
- (a) for each current member:
 - i. name
 - ii. address
 - iii. any alternative address nominated by the member for the service of notices, and
 - iv. date the member was entered on to the register.
 - (b) for each person who stopped being a member in the last 7 years:
 - i. name
 - ii. address
 - iii. any alternative address nominated by the member for the service of notices, and
 - iv. dates the membership started and ended.
- 10.3 The **company** must give current members access to the register of members.
- 10.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

11. Who can be a member

- 11.1 A person who supports the purposes of the **company** is eligible to apply to be a member of the **company** under clause 12.
- 11.2 In this clause, 'person' means an individual or incorporated body.
- 11.3 The directors may create different classes of members with different eligibility criteria, rights and liabilities attaching to each class.

- 11.4 Subject to the **Corporations Act** the directors may vary the eligibility criteria, rights and liabilities attaching to classes of members and may amalgamate any 2 or more classes of members.
- 11.5 The classes of members as at the date of adoption of this constitution are as set out in Appendix A.

12. How to apply to become a member

A person (as defined in clause 11.2) may apply to become a member of the **company** by writing to the secretary stating that they:

- (a) want to become a member;
- (b) support the purpose(s) of the **company**; and
- (c) agree to comply with the **company's** constitution, including paying the guarantee under clause 4 if required.

13. Directors decide whether to approve membership

- 13.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application.
- 13.2 If the directors approve an application, the secretary must as soon as possible:
- (a) enter the new member on the register of members; and
 - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14).
- 13.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- 13.4 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 12(a), 12(b) or 12(c). In that case, by applying to be a member, the applicant agrees to those 3 matters.

14. When a person becomes a member

Other than **initial members**, an applicant will become a member when they are entered on the register of members.

15. When a person stops being a member

- 15.1 A person immediately stops being a member if they:
- (a) are wound up or otherwise dissolved or deregistered (for an incorporated member);
 - (b) resign, by writing to the secretary;
 - (c) are expelled under clause 19; or
 - (d) have not responded within 3 months to a written request from the secretary that they confirm in writing that they want to remain a member.
- 15.2 No fees shall be refunded to any person on the termination of membership and all monies then owing to the company shall remain payable.

16. Annual Fee

- 16.1 The annual fee payable by members is as determined by the directors from time to time.

17. Changing regional class

17.1 Where a member of a **regional class**:

- (a) being an individual member, becomes ordinarily resident in another **region**; or
- (b) being a non-individual member, permanently relocates its head office to another **region**,

then at the commencement of the move, that member's membership of a **regional class** automatically changes to the **regional class** corresponding to their new **region**. The member must notify the **company** in writing of its new address and the date of the commencement of the move as soon as is reasonably practicable.

Dispute resolution and disciplinary procedures

18. Dispute resolution

18.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:

- (a) one or more members;
- (b) one or more directors; or
- (c) the **company**.

18.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 19 until the disciplinary procedure is completed.

18.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

18.4 If those involved in the dispute do not resolve it under clause 18.3, they must within 10 days:

- (a) tell the directors about the dispute in writing;
- (b) agree or request that a mediator be appointed; and
- (c) attempt in good faith to settle the dispute by mediation.

18.5 The mediator must:

- (a) be chosen by agreement of those involved; or
- (b) where those involved do not agree:
 - i. for disputes between members, a person chosen by the directors, or
 - ii. for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the **company** has its registered office.

18.6 A mediator chosen by the directors under clause 18.5(b)(i):

- (a) may be a member or former member of the **company**;
- (b) must not have a personal interest in the dispute; and
- (c) must not be biased towards or against anyone involved in the dispute.

18.7 When conducting the mediation, the mediator must:

- (a) allow those involved a reasonable chance to be heard;
- (b) allow those involved a reasonable chance to review any written statements;
- (c) ensure that those involved are given natural justice; and
- (d) not make a decision on the dispute.

19. Disciplining members

19.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the **company** if the directors consider that:

- (a) the member has breached this constitution;
- (b) the conduct of the member is, in the reasonable opinion of the directors, unbecoming of a member or prejudicial to the objects, interest or reputation of the **company**; or
- (c) the member's behaviour is causing, has caused, or is likely to cause harm to the **company**.

19.2 At least 14 days before the directors' meeting at which a resolution under clause 19.1 will be considered, the secretary must notify the member in writing:

- (a) that the directors are considering a resolution to warn, suspend or expel the member;
- (b) that this resolution will be considered at a directors' meeting and the date of that meeting;
- (c) what the member is said to have done or not done;
- (d) the nature of the resolution that has been proposed; and
- (e) that the member may provide an explanation to the directors, and details of how to do so.

19.3 Before the directors pass any resolution under clause 19.1, the member must be given a chance to explain or defend themselves by:

- (a) sending the board a written explanation before that directors' meeting; and/or
- (b) speaking at the meeting.

19.4 After considering any explanation under clause 19.3, the directors may:

- (a) take no further action;
- (b) warn the member;
- (c) suspend the member's rights as a member for a period of no more than 12 months;
- (d) expel the member;
- (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause); or
- (f) require the matter to be determined at a **general meeting**.

19.5 The directors cannot fine a member.

- 19.6 The secretary must give written notice to the member of the decision under clause 19.4 as soon as possible.
- 19.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 19.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.
- 19.9 The directors may reinstate an expelled or suspended member on any terms and at any time as the directors resolve.

General meetings of members

20. General meetings called by directors

- 20.1 The directors may call a **general meeting** at a time and place as the directors resolve.
- 20.2 If members with at least 5% of the votes that may be cast at a **general meeting** make a written request to the **company** for a **general meeting** to be held, the directors must:
 - (a) within 21 days of the members' request, give all members notice of a **general meeting**; and
 - (b) hold the **general meeting** within 2 months of the members' request.
- 20.3 The percentage of votes that members have (in clause 20.2) is to be worked out as at midnight before the members request the meeting.
- 20.4 The members who make the request for a **general meeting** must:
 - (a) state in the request any resolution to be proposed at the meeting;
 - (b) sign the request; and
 - (c) give the request to the **company**.
- 20.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

21. General meetings called by members

- 21.1 If the directors do not call the meeting within 21 days of being requested under clause 20.2, 50% or more of the members who made the request may call and arrange to hold a **general meeting**.
- 21.2 To call and hold a meeting under clause 21.1 the members must:
 - (a) as far as possible, follow the procedures for **general meetings** set out in this constitution;
 - (b) call the meeting using the list of members on the **company's** member register, which the **company** must provide to the members making the request at no cost; and
 - (c) hold the **general meeting** within 3 months after the request was given to the **company**.
- 21.3 The **company** must pay the members who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.

22. Annual general meeting

- 22.1 A **general meeting**, called the annual **general meeting**, must be held:
- (a) within 18 months after registration of the **company**; and
 - (b) after the 1st annual **general meeting**, at least once in every calendar year.
- 22.2 Even if these items are not set out in the notice of meeting, the business of an annual **general meeting** may include:
- (a) a review of the **company's** activities;
 - (b) a review of the **company's** finances;
 - (c) consideration of the annual financial report, the directors' report and any auditor's report for the **company**;
 - (d) the election of directors; and
 - (e) the appointment and payment of auditors, if any.
- 22.3 Before or at the annual **general meeting**, the directors must give information to the members on the **company's** activities and finances during the period since the last annual **general meeting**.
- 22.4 The chairperson of the annual **general meeting** must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

23. Notice of general meetings

- 23.1 Notice of a **general meeting** must be given to:
- (a) each member entitled to vote at the meeting;
 - (b) each director; and
 - (c) the auditor (if any).
- 23.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 23.3 Subject to clause 23.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual **general meeting**, all the members entitled to attend and vote at the annual **general meeting** agree beforehand; or
 - (b) for any other **general meeting**, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 23.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director;
 - (b) appoint a director in order to replace a director who was removed; or
 - (c) remove an auditor.
- 23.5 Notice of a **general meeting** must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);

- (b) the general nature of the meeting's business;
 - (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution;
 - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - i. the proxy does not need to be a member of the **company**
 - ii. the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
 - iii. the proxy form must be delivered to the **company** at least 48 hours before the meeting.
- 23.6 If a **general meeting** is adjourned (put off) for 1 month or more, the members must be given new notice of the resumed meeting.

24. Quorum at general meetings

- 24.1 For a **general meeting** to be held, at least 10 members entitled to vote at a **general meeting** (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than 1 member).
- 24.2 No business may be conducted at a **general meeting** if a quorum is not present.
- 24.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify 1 or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week;
 - (b) if the time is not specified – the same time; and
 - (c) if the place is not specified – the same place.
- 24.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

25. Auditor's and directors' right to attend meetings

- 25.1 The auditor (if any) is entitled to attend any **general meeting** and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 25.2 The **company** must give the auditor (if any) any communications relating to the **general meeting** that a member of the **company** is entitled to receive.
- 25.3 Subject to this constitution, each director is entitled to attend and speak at all meetings of members.

26. Representatives of members

- 26.1 An incorporated member may appoint as a representative:
- (a) 1 individual to represent the member at meetings and to sign circular resolutions under clause 33; and

- (b) the same individual or another individual for the purpose of being appointed or elected as a director.
- 26.2 The appointment of a representative by a member must:
 - (a) be in writing;
 - (b) include the name of the representative;
 - (c) be signed on behalf of the member; and
 - (d) be given to the **company** or, for representation at a meeting, be given to the chairperson before the meeting starts.
- 26.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
- 26.4 The appointment may be standing (ongoing).

27. Using technology to hold meetings

- 27.1 The **company** may hold a **general meeting** at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 27.2 Anyone using this technology is taken to be present in person at the meeting.

28. Chairperson for general meetings

- 28.1 The elected chairperson is entitled to chair **general meetings**.
- 28.2 The directors present at a **general meeting** may choose a director or member to be the chairperson for that meeting if:
 - (a) there is no elected chairperson; or
 - (b) the elected chairperson is not present within 30 minutes after the starting time set for the meeting; or
 - (c) the elected chairperson is present but says they do not wish to act as chairperson of the meeting.

29. Role of the chairperson

- 29.1 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 29.2 The chairperson does not have a casting vote.

30. Adjournment of meetings

- 30.1 If a quorum is present, a **general meeting** must be adjourned if a majority of **members present** direct the chairperson to adjourn it.
- 30.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' resolutions and statements

31. Members' resolutions and statements

- 31.1 Members with at least 5% of the votes that may be cast on a resolution may give:

- (a) written notice to the **company** of a resolution they propose to move at a **general meeting** (members' resolution); and/or
 - (b) a written request to the **company** that the **company** give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members' statement).
- 31.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 31.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 31.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 31.5 The percentage of votes that members have (as described in clause 31.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 31.6 If the **company** has been given notice of a members' resolution under clause 31.1(a), the resolution must be considered at the next **general meeting** held more than 2 months after the notice is given.
- 31.7 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

32. Company must give notice of proposed resolution or distribute statement

- 32.1 If the **company** has been given a notice or request under clause 31.1:
- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the **company's** cost; or
 - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a **general meeting**, the members may pass a resolution that the **company** will pay these expenses.
- 32.2 The **company** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
- (a) it is more than 1 000 words long;
 - (b) the directors consider it may be defamatory;
 - (c) clause 32.1(b) applies, and the members who proposed the resolution or made the request have not paid the **company** enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members; or
 - (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the members.

33. Circular resolutions of members

- 33.1 Subject to clause 33.3, the directors may put a resolution to the members to pass a resolution without a **general meeting** being held (a circular resolution).
- 33.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- 33.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a director or remove a director;
 - (b) for passing a **special resolution**; or
 - (c) where the **Corporations Act** or this constitution requires a meeting to be held.
- 33.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 33.5 or clause 33.6.
- 33.5 Members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 33.6 The **company** may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

Voting at general meetings

34. How many votes a member has

Each member has 1 vote.

35. Challenge to member's right to vote

- 35.1 A member or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 35.2 If a challenge is made under clause 35.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

36. How voting is carried out

- 36.1 Voting must be conducted and decided by:
- (a) a show of hands;
 - (b) a vote in writing; or
 - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 36.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 36.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 36.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

37. When and how a vote in writing must be held

- 37.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least 5 **members present**;
 - (b) **members present** with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
 - (c) the chairperson.
- 37.2 A vote in writing must be taken when and how the chairperson directs, unless clause 37.3 applies.
- 37.3 A vote in writing must be held immediately if it is demanded under clause 37.1 to decide whether to adjourn the meeting.
- 37.4 A demand for a vote in writing may be withdrawn.

38. Appointment of proxy

- 38.1 A member may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 38.2 A proxy does not need to be a member.
- 38.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting;
 - (b) vote in a vote in writing (but only to the extent allowed by the appointment); and
 - (c) join in to demand a vote in writing under clause 37.1.
- 38.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address;
 - (b) the **company's** name;
 - (c) the proxy's name or the name of the office held by the proxy; and
 - (d) the meeting(s) at which the appointment may be used.
- 38.5 A proxy appointment may be standing (ongoing).
- 38.6 Proxy forms must be received by the **company** at the address stated in the notice under clause 23.5(d) or at the **company's** registered address at least 48 hours before a meeting.
- 38.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 38.8 Unless the **company** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies;
 - (b) is mentally incapacitated;
 - (c) revokes the proxy's appointment; or

- (d) revokes the authority of a representative or agent who appointed the proxy.
- 38.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

39. Voting by proxy

- 39.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).
- 39.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
 - (b) if the way they must vote is specified on the proxy form, must vote that way; and
 - (c) if the proxy is also a member or holds more than 1 proxy, may cast the votes held in different ways.

Directors

40. Number of directors

- 40.1 The **company** must have at least 6 and no more than 9 directors comprising:
- (a) 6 elected directors, with 2 to be elected from the **southern region**, 2 to be elected from the **northern region** and 2 to be elected from the **north-western region**; and
 - (b) up to 3 directors appointed by the current directors if they see fit.

41. Election and appointment of directors

- 41.1 The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the **company**.
- 41.2 Apart from the initial directors and directors appointed under clause 41.5, the directors noted at clause 40.1(a) are to be elected by the members in such manner as the directors approve from time to time (including the use of postal and/or electronic voting).
- 41.3 A person is eligible for election as a director of the **company** if they:
- (a) subject to clause 41.7, are a member of the **company**, or a representative of a member of the **company**;
 - (b) are nominated by 2 members or representatives of members entitled to vote (unless the person was previously elected as a director at a **general meeting** and has been a director since that meeting);
 - (c) give the **company** their signed consent to act as a director of the **company**; and
 - (d) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 41.4 An individual is not eligible to be an elected director (excluding directors appointed pursuant to clause 41.11) if:

- (a) being an individual member; or
 - (b) being an employee or director of a non-individual member,
any amount due and payable in respect of that member's membership.
- 41.5 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
- (a) subject to clause 41.7, is a member of the **company**, or a representative of a member of the **company**;
 - (b) gives the **company** their signed consent to act as a director of the **company**;
and
 - (c) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 41.6 In appointing a director pursuant to clause 41.5, the directors must take into account, in order:
- (a) the desire to have a balance of skills, gender, ethnicity and expertise amongst the directors across a variety of fields, including but not limited to law, accounting, human resources and marketing; and
 - (b) the desire to have representation of each **region**.
- Such directors will be appointed on terms to be agreed by the current directors and will hold office until the conclusion of the 1st annual **general meeting** following their appointment. Such directors may be re-appointed by the current directors.
- 41.7 If a nominated candidate is neither a member nor an employee or director of a non-individual member, the nomination must be accompanied by that person's application for membership, which may be expressed to be conditional on that application being approved.
- 41.8 If the number of directors is reduced to fewer than 6 or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to 6 (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.
- 41.9 A director may not appoint an alternate director.
- 41.10 No later than 6 weeks prior to the date of each annual **general meeting**, the directors will invite members from the same **regions** as the retiring elected directors to nominate individuals from their **region** as candidates for directorship to fill the elected director vacancies at the annual **general meeting**. Each nomination must be:
- (a) made in writing, noting the **region** the candidate is from;
 - (b) signed by 2 members;
 - (c) accompanied by the written consent of the candidate (which may be endorsed on the nomination); and
 - (d) received by the **company** at least 1 calendar month prior to the date of the annual **general meeting**.
- 41.11 If at the annual **general meeting**, there is no candidate from a particular **region** for which nominations have been sought, further nominations in respect of that **region**

are to be sought at the annual **general meeting**. If no such further nominations are received at the annual **general meeting**, then the directors may fill that vacancy by appointing as a director an individual from that **region** as soon as practicable, and, unless the contrary is specified, this constitution will apply to that appointed director as if they were a director elected at the annual **general meeting**.

- 41.12 If, at the annual **general meeting**, there is only 1 candidate from a particular **region**, that candidate is elected unopposed in respect of the vacancy relating to that **region**.
- 41.13 If, at the annual **general meeting**, there is more than 1 candidate from a particular **region**, a ballot is to be held in respect of the vacancy relating to that **region**.
- 41.14 For the period between the **effective date** and the second annual **general meeting** after the **effective date** there shall be no election of directors, as provided for in this clause 41 and clause 42 (unless during this period the number of directors falls below the requisite minimum number of directors set out in clause 40.1).

42. Term of office

- 42.1 An elected director will hold office until the conclusion of the 4th annual **general meeting** following the director's election and, subject to clauses 42.2 and 42.3, is eligible for re-election.
- 42.2 Retirement of elected directors will occur in cycles of annual **general meetings** as follows:
- (a) at the 2nd annual general meeting in a cycle, the elected director from the **southern region** who has been in office the longest and the elected director from the **north-western region** who has been in office the longest will retire;
 - (b) at the 3rd annual **general meeting** in the cycle, the elected director from the **northern region** who has been in office the longest will retire;
 - (c) at the 4th annual **general meeting** in the cycle, the elected director from the **southern region** who has been in office the longest and the elected Director from the **north-western region** who has been in office the longest will retire; and
 - (d) at the 5th annual **general meeting** in the cycle, the elected director from the **northern region** who has been in office the longest will retire.

Thereafter the retirement of elected directors will continue in all future annual general meetings in accord with the cycle set out in clauses 42.2(a) and 42.2(b) unless otherwise amended by the Members.

- 42.3 A director is ineligible for appointment, re-appointment, election or re-election if he or she has served as a director for 10 consecutive years, and shall remain so disqualified for 3 years after becoming so disqualified.

43. When a director stops being a director

- 43.1 The office of a director is immediately vacated upon the director:
- (a) becoming bankrupt;
 - (b) dying;
 - (c) becoming a represented person under the *Guardianship and Administration Act 1995*;

- (d) resigning office by notice in writing to the **company**;
 - (e) being removed from office by resolution of the members or board in accordance with this constitution or otherwise pursuant to the **Corporations Act**;
 - (f) being prohibited from being a director by reason of the operation of the **Corporations Act**;
 - (g) no longer being a member of the **company**, whether in their personal capacity, or in the case of the director being a representative of a member, that member no longer being a member of the **company**;
 - (h) without the consent of the board, being absent from 3 consecutive meetings of the board;
 - (i) being removed from office by order of the Supreme Court on the grounds of proved misconduct;
 - (j) being removed by a resolution of the board for failing to abide by any code of conduct adopted by the board from time to time or by resolution of the board in accordance with this constitution;
 - (k) being an elected director (excluding a director appointed by the Board pursuant to clause 41.5), failing to pay, within 60 days of the amount becoming due and payable, any amount in respect of that director's membership, or, where the director is an employee or director of a non-individual member, that member failing to pay within the same time any amount in respect of that member's membership;
 - (l) except in the case of an appointed director (including a director appointed by the board pursuant to clause 41.5) or a director or employee of a non-individual member, ceasing to be a member from the **region** for which the director was elected;
 - (m) except in the case of an appointed director (including a director appointed by the Board pursuant to clause 41.5) or an individual member, ceasing to be a director or employee of a non-individual Member from the **region** for which the Director was elected; or
 - (n) reaching the end of their period of appointment in accordance with clause 42 unless re-appointed in accordance with this constitution.
- 43.2 The board may by resolution passed at a meeting of directors remove a director from office as a director if the conduct or position of the director is such that continuance in office is considered prejudicial to the objects, interest or reputation of the **company**.

Powers of directors

44. Powers of directors

- 44.1 The directors are responsible for managing and directing the activities of the **company** to achieve the purpose(s) set out in clause 6.

- 44.2 The directors may use all the powers of the **company** except for powers that, under the **Corporations Act** or this constitution, may only be used by members.
- 44.3 The directors must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 45; and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 44.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.

45. Delegation of directors' powers

- 45.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the **company** (such as a chief executive officer) or any other person, as they consider appropriate.
- 45.2 The delegation must be recorded in the **company's** minute book.
- 45.3 Any delegate of the board or committee formed or person or persons appointed to such a committee must, in the exercise of the powers delegated, conform to any regulations that may from time to time be imposed by the board.

46. Election of chairperson, office bearers and establishment of committees of the board

- 46.1 At the 1st meeting of the board, to be held immediately after the annual **general meeting**, the board shall:
- (a) elect office bearers. Office bearers shall comprise of:
 - i. one (1) chairperson (subject to clause 46.2)
 - ii. one (1) deputy chairperson
 - iii. one (1) treasurer who shall also assume the chairperson role of the Finance and Audit Committee, and
 - iv. one (1) company secretary (subject to clause 61),
 - (b) determine the sub-committees of the board and elect the chairperson of the committees; and
 - (c) ensure that a Finance, Governance and Audit is established which shall report and provide minutes to each board meeting. The Finance, Governance and Audit Committee shall meet at least as regularly as the board shall meet.
- 46.2 Until the election of the chairperson the CEO shall act as chairperson whereafter the elected chairperson shall assume the role of chairperson.

47. Chairperson and CEO

- 47.1 At the 1st board meeting following the annual **general meeting**, the board shall elect 1 director to act as chairperson until the 1st board meeting following the next annual **general meeting**, at which the existing chairperson is eligible for re-election.
- 47.2 In the case of an equality of votes on a question arising at a board meeting, the directors must make all reasonable attempts to avoid the deadlock. If there is still an equality of votes after all such reasonable attempts have been made, the chairperson of the meeting has a casting vote, in addition to any vote he or she has as a director.

- 47.3 The board may appoint a person as CEO on terms to be agreed by the board.
- 47.4 Subject to clause 47.5, the CEO is to attend all board meetings, meetings of members and any other meetings the board determines from time to time.
- 47.5 Unless the board determines otherwise, the CEO must excuse himself from any part of a board or member meeting which is directly concerned with the performance and/or terms of employment of the CEO.

48. Appointment of Committees

- 48.1 In appointing the members of a committee, the board may seek recommendations for membership from Affiliated Chambers, and will try to accommodate such recommendations subject to the overriding requirement for the board to ensure that:
- (a) committee members have the balance of skills and expertise needed to best perform the delegated functions; and
 - (b) the committee remains an optimum size.

49. Proceedings of Committees

- 49.1 The meetings and proceedings of any committee are to be governed by the provisions of this constitution for regulating the meetings and proceedings of the board to the extent that:
- (a) those provisions are applicable and are not superseded by any regulations made by the board; and
 - (b) they are not inconsistent with a determination of the board.

50. Payments to directors

- 50.1 The **company** may pay to the directors reasonable and proper remuneration for services actually rendered to the Company, after obtaining and having regard to an independent recommendation from an appropriately qualified person or organisation, of the appropriate range for that remuneration.
- 50.2 The **company** may:
- (a) pay a director for work they do for the **company**, other than as a director, if the amount is no more than a reasonable fee for the work done; or
 - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **company** (including but not limited to reasonable travel, accommodation and other expenses properly incurred by the director in attending **company** related meetings).
- 50.3 Any payment made under clause 50.2 must be approved by the directors.
- 50.4 The **company** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this constitution.

51. Execution of documents and company seal

- 51.1 The **company** may execute a document without using a common seal if the document is signed by:
- (a) 2 directors of the **company**; or
 - (b) a director and the secretary.

- 51.2 The **company** may from time to time exercise the powers conferred by the **Corporations Act** in relation to official seals and those powers are vested in the board.
- 51.3 The board is to provide for the safe custody of the seal, which should only be used with its authority. Every instrument to which the seal is affixed is to be signed by a director and countersigned by the CEO or by a 2nd director or by another person appointed by the board for the purpose.
- 51.4 A director who is interested in any contract or arrangement may, notwithstanding the interest, attest the affixing of the seal to any document evidencing or otherwise connected with the contract or arrangement.

Duties of directors

52. Duties of directors

The directors must comply with their duties as directors under legislation and common law (judge-made law):

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **company**;
- (b) to act in good faith in the best interests of the **company** and to further the purpose(s) of the **company** set out in clause 6;
- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 53;
- (f) to ensure that the financial affairs of the **company** are managed responsibly; and
- (g) not to allow the **company** to operate while it is insolvent.

53. Conflicts of interest

- 53.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
- (a) to the other directors; or
 - (b) if all of the directors have the same conflict of interest, to the members at the next **general meeting**, or at an earlier time if reasonable to do so.
- 53.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 53.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 53.4:
- (a) be present at the meeting while the matter is being discussed; or

(b) vote on the matter.

53.4 A director may still be present and vote if:

- (a) their interest arises because they are a member of the **company**, and the other members have the same interest;
- (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the **company** (see clause 72);
- (c) their interest relates to a payment by the **company** under clause 71 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**;
- (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter; or
- (e) the directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the **company**, and
 - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

Directors' meetings

54. When the directors meet

The directors may decide how often, where and when they meet, subject to the rule that the board must meet at least 10 times per year.

55. Calling directors' meetings

55.1 Any 2 directors may call a directors' meeting by giving not less than 48 hours notice to all of the other directors and the CEO (if appointed).

55.2 The form of notice may be in writing or by any other means of communication that has previously been agreed to by all of the directors.

56. Chairperson for directors' meetings

56.1 The elected chairperson is entitled to chair directors' meetings.

56.2 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the elected chairperson is:

- (a) not present within 30 minutes after the starting time set for the meeting; or
- (b) present but does not want to act as chairperson of the meeting.

57. Quorum at directors' meetings

57.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of directors.

57.2 A quorum must be present for the whole directors' meeting.

58. Using technology to hold directors' meetings

- 58.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 58.2 The directors' agreement may be a standing (ongoing) one.
- 58.3 A director may only withdraw their consent within a reasonable period before the meeting.

59. Passing directors' resolutions

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

60. Circular resolutions of directors

- 60.1 The directors may pass a circular resolution without a directors' meeting being held.
- 60.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 60.3 or clause 60.4.
- 60.3 Each director may sign:
 - (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 60.4 The **company** may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 60.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 60.3 or clause 60.4.

Secretary & Auditor

61. Appointment and role of secretary

- 61.1 The **company** must have at least 1 secretary, who may also be a director.
- 61.2 A secretary must be appointed by the directors (after giving the **company** their signed consent to act as secretary of the **company**) and may be removed by the directors.
- 61.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 61.4 The role of the secretary includes:
 - (a) maintaining a register of the **company's** members; and
 - (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), directors' meetings and circular resolutions.

62. Appointment and role of auditor

- 62.1 A properly qualified auditor will be appointed by the **company** to audit the accounts. The remuneration of the auditor appointed should be fixed and duties regulated in accordance with the **Corporations Act**.

Minutes and records

63. Minutes and records

- 63.1 The **company** must, within 1 month, make and keep the following records:
- (a) minutes of proceedings and resolutions of **general meetings**;
 - (b) minutes of circular resolutions of members;
 - (c) a copy of a notice of each **general meeting**; and
 - (d) a copy of a members' statement distributed to members under clause 32.
- 63.2 The **company** must, within 1 month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees); and
 - (b) minutes of circular resolutions of directors.
- 63.3 To allow members to inspect the **company's** records:
- (a) the **company** must give a member access to the records set out in clause 63.1; and
 - (b) the directors may authorise a member to inspect other records of the **company**, including records referred to in clause 63.2 and clause 64.1.
- 63.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting; or
 - (b) the chairperson of the next meeting.
- 63.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

64. Financial and related records

- 64.1 The **company** must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance; and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 64.2 The **company** must also keep written records that correctly record its operations.
- 64.3 The **company** must retain its records for at least 7 years.
- 64.4 The directors must take reasonable steps to ensure that the **company's** records are kept safe.

By-laws

65. By-laws

- 65.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 65.2 Members and directors must comply with by-laws as if they were part of this constitution.

Notice

66. What is notice

- 66.1 Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 67 to 69, unless specified otherwise.
- 66.2 Clauses 67 to 69 do not apply to a notice of proxy under clause 38.6.

67. Notice to the company

Written notice or any communication under this constitution may be given to the **company**, the directors or the secretary by:

- (a) delivering it to the **company's** registered office;
- (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided;
- (c) sending it to an email address or other electronic address notified by the **company** to the members as the **company's** email address or other electronic address; or
- (d) sending it to the fax number notified by the **company** to the members as the **company's** fax number.

68. Notice to members

- 68.1 Written notice or any communication under this constitution may be given to a member:
- (a) in person;
 - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
 - (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any);
 - (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any); or
 - (e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- 68.2 If the **company** does not have an address for the member, the **company** is not required to give notice in person.

69. When notice is taken to be given

A notice:

- (a) delivered in person, or left at a the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the 3rd day after it is posted with the correct payment of postage costs; and
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent.

Financial year

70. Company's financial year

The **company's** financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

Indemnity, insurance and access

71. Indemnity

71.1 The **company** indemnifies each director, secretary and other officer of the **company** out of the assets of the **company**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **company**. This indemnity extends to:

- (a) defending any proceedings, whether civil or criminal, in which judgment is given in the officer's favour or in which the officer is acquitted; or
- (b) any application, in relation to such proceedings, in which a court grants relief to the officer.

71.2 In this clause, 'to the relevant extent' means:

- (a) to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so; and
- (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

71.3 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

72. Insurance

72.1 To the extent permitted by law (including the **Corporations Act**), the **company** will provide directors with appropriate directors liability insurance.

72.2 The Finance, Governance and Audit Committee shall report to the board annually on the status of relevant insurance coverage and board members' rights and responsibilities under any relevant insurance policy.

73. Directors' access to documents

73.1 A director has a right of access to the financial records of the **company** at all reasonable times.

73.2 If the directors agree, the **company** must give a director or former director access to:

- (a) certain documents, including documents provided for or available to the directors; and
- (b) any other documents referred to in those documents.

Winding up

74. Surplus assets not to be distributed to members

If the **company** is wound up, any **surplus assets** must not be distributed to a member or a former member of the **company**, unless that member or former member is a not-for-profit described in clause 75.1.

75. Distribution of surplus assets

- 75.1 Subject to the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** that remain after the **company** is wound up must be distributed to 1 or more organisations:
- (a) with purpose(s) similar to, or inclusive of, the purpose(s) in clause 6; and
 - (b) which also prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **company**.
- 75.2 The decision as to the organisation to be given the **surplus assets** must be made by a **special resolution** of members at or before the time of winding up. If the members do not make this decision, the **company** may apply to the Supreme Court to make this decision.

Definitions and interpretation

76. Definitions

In this constitution:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth)

company means the **company** referred to in clause 1

Corporations Act means the *Corporations Act 2001* (Cth)

effective date means the date this constitution is adopted by the Company in accordance with the **Corporations Act**.

general meeting means a meeting of members and includes the annual **general meeting**, under clause 22.1

initial member means a person who is named in the application for registration of the **company**, with their consent, as a proposed member of the **company**

north-western region means the region of Tasmania with the telephone prefix of (03) 64

northern region means the region of Tasmania with the telephone prefix of (03) 63

member present means, in connection with a **general meeting**, a **member present** in person, by representative or by proxy at the venue or venues for the meeting

region means each of the **southern region**, the **northern region** and the **north-western region**

regional class means each of the Southern Class, the Northern Class and the North-Western Class of members, as described in Appendix A

southern region means the region of Tasmania with the telephone prefix of (03) 62

special resolution means a resolution:

- i. of which notice has been given under clause 23.5(c), and
- ii. that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution, and

surplus assets means any assets of the **company** that remain after paying all debts and other liabilities of the **company**, including the costs of winding up.

77. Reading this constitution with the Corporations Act

- 77.1 Unless specified otherwise in this constitution, the replaceable rules set out in the **Corporations Act** apply to the **company**.
- 77.2 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this constitution.

78. Interpretation

In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression; and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

Appendix A - Classes of Members (Clause 11.5)

Southern Class

1. Southern members must be either:
 - (a) individuals who are ordinarily resident in the **southern region** or outside of Tasmania but who nominate to be identified as a member of the **southern region**; or
 - (b) businesses or other organisations with their head office in the **southern region** or outside of Tasmania but who nominate to be identified as a member of the **southern region**.
2. Southern members may only nominate and vote for candidates for the position of an elected director who are from the **southern region**.

Northern Class

1. Northern members must be either:
 - (a) individuals who are ordinarily resident in the **northern region** or outside of Tasmania but who nominate to be identified as a member of the **northern region**; or
 - (b) businesses or other organisations with their head office in the **northern region** or outside of Tasmania but who nominate to be identified as a member of the **northern region**
2. Northern members may only nominate and vote for candidates for the position of an elected director who are from the **northern region**.

North-Western Class

1. North-Western members must be either:
 - (a) individuals who are ordinarily resident in the **north-western region** or outside of Tasmania but who nominate to be identified as a member of the **north-western region**; or
 - (b) businesses or other organisations with their head office in the **north-western region** or outside of Tasmania but who nominate to be identified as a member of the **north-western region**.
2. North-Western members may only nominate and vote for candidates for the position of an elected director who are from the **north-western region**.

Establishment of Class for resident outside of Tasmania

Where a member is resident outside of Tasmania, the member must nominate at the time of establishing their membership which **region** is their membership class preference. The member's class cannot be altered without the approval of the directors.