

Corporations Act 2001

CONSTITUTION
of the
AUSTRALIAN GREEN INFRASTRUCTURE COUNCIL
ABN 51 131 329 774

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1. GENERAL

1.1 Definitions

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

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

AGIC means Australian Green Infrastructure Council, a public company limited by guarantee.

Board means the board of Directors of the AGIC.

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

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

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

Director means a director of the AGIC.

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

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

Membership Group has the meaning given in rule 6.2.

Register means a register of members of the AGIC.

Seal means the common seal of the AGIC.

Secretary means a secretary of the AGIC from time to time.

Surplus Property has the meaning given in rule 5.1.

1.2 Interpretation

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

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

1.3 Replaceable rules

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

1.4 Actions authorised under the Act

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

2. NAME AND PURPOSES

2.1 Name

The name of the company is “Australian Green Infrastructure Council”.

2.2 Company’s principal purposes

The company is established:

- (a) To be Australia’s principal coalition of leaders in promoting environmentally responsible infrastructure and raising the standard of environmental performance in the design, construction and operation of Australian infrastructure for the better protection of the natural environment;
- (b) To disseminate and develop and encourage the dissemination and development of knowledge regarding environmentally responsible and sustainable infrastructure practices for the better protection of the natural environment;
- (c) To establish environmental performance benchmarks which are recognised as leading-practice for Australian conditions for infrastructure and related industries for the better protection of the natural environment;
- (d) To publicise environmentally responsible and sustainable infrastructure development practices within the infrastructure industry and the wider community generally;
- (e) To act as a focal point for information on environmentally responsible and sustainable infrastructure, including for consumers and the infrastructure industry;
- (f) To act as a lead partner in research into environmentally sustainable infrastructure and evaluation metrics for environmentally sustainable infrastructure for the better protection of the natural environment;
- (g) To support and encourage and assist in the development of teaching and research programs to raise the knowledge and skill base of infrastructure practitioners in environmentally responsible and sustainable infrastructure and in particular to actively work to align relevant publicly funded research to the practice/market requirements for innovation and development in environmentally responsible and sustainable infrastructure provision and operation.
- (h) To participate in public debate on environmental issues within and that affect the infrastructure industry.

2.3 Company’s powers

The company shall exercise the powers conferred by law and this constitution for carrying out the company’s purposes.

3. LIABILITY OF MEMBERS

3.1 Limited liability

The liability of the members is limited to the amount of the guarantee given under rule 3.2.

3.2 Members’ undertaking to contribute

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

4. APPLICATION OF INCOME AND PROPERTY

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

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

4.2 *Prohibition on dividends and distributions*

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

4.3 *Permitted payments to officers, members and employees*

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

- (a) reasonable remuneration for services actually rendered to the AGIC in a professional or other capacity (other than as a director);
- (b) goods delivered to the AGIC;
- (c) out-of-pocket (including for travel and accommodation) expenses incurred in the performance of a duty to the AGIC or otherwise on AGIC business;
- (d) commercially reasonable interest on money lent to the AGIC;
- (e) commercially reasonable rent for property leased to the AGIC; or
- (f) the indemnification of, or payment of premiums on contracts of insurance for any director to the extent permitted by law and otherwise permitted by this constitution.

4.4 *Approval of payments*

The Board will approve from time to time procedures to govern the approval and payment of funds from AGIC resources.

5. APPLICATION OF SURPLUS ON WINDING-UP

5.1 *Distribution of Surplus Property*

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

5.2 *Determination of members regarding distribution of Surplus Property*

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

- (a) is connected with the promotion of environmentally responsible infrastructure;
- (b) has objects similar to those of the AGIC; and
- (c) prohibits the distribution of its income or property amongst its members to an extent at least as great as imposed under this Constitution.

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

5.3 *Determination of Directors regarding Surplus Property*

- (a) If there is no determination made in accordance with rule 5.2, the Surplus Property shall be given or transferred to any Australian entity, as determined by the Board, which has substantially similar objects to those of the AGIC and which prohibits the distribution of its income or property amongst its members to an extent at least as

great as imposed under this Constitution, in such manner as the Board shall determine.

- (b) If and so far as effect cannot be given to this rule 5.3, the Surplus Property shall be applied in Australia to some charitable object.

5.4 *Alteration of Constitution*

The company must not pass a special resolution altering rules 2.2, 4.1 to 4.3 (inclusive) or rule 5 of this constitution.

6. MEMBERSHIP

6.1 *Members*

The members are:

- (a) the persons consenting to be the initial members in connection with the registration of the company; and
- (b) any other persons the directors admit to membership in accordance with this constitution.

6.2 *Membership Groups*

- (a) The Board may decide any eligibility criteria and categories of membership (Membership Groups) as they consider appropriate from time to time.
- (b) The Board may at any time establish or terminate from the list of Membership Groups in paragraph (a) and from that time on, and each such group shall be or cease to be (as appropriate) a "Membership Group" for the purposes of this Constitution. A member who is a member of a Membership Group that the Board determines to terminate will be placed in such other Membership Group as the Board considers of the closest type to that terminated group.
- (c) Each member must, on seeking admission in good faith, nominate to which Membership Group it wishes to belong. The Board shall decide the Membership Group to which the applicant member is to belong, and the Board's decision on this matter shall be final and binding. If the Board proposes to include a prospective member in a group other than a Membership Group that person has nominated, it shall inform that prospective member who may withdraw or affirm its application for membership.

6.3 *Application for membership*

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

6.4 *Entry of candidate's name on Register*

Upon approval by the Board of a membership application, the Secretary may enter the applicant's name on the Register.

6.5 *Annual subscription fee and other fees*

- (a) The Board shall determine the amount of fees payable by members, including an annual subscription fee and entrance fee (if any). Different fees may be charged for different Membership Groups. The Board may grant any concession in regard to entrance, membership or any other fees that they see fit, including the full or partial waiver or rebate of all or any such fees including any increase of fees.
- (b) The Board shall review the fees payable by members as they consider necessary, but at least once each financial year.

- (c) The annual subscription fee (if any) shall be payable annually in advance on the first day of July each year or on such other day as the Board determines. The annual subscription fee payable by members joining during a year will be charged the annual subscription fee on a pro-rata basis.
- (d) Any other fees shall be payable at the time determined by the Board, provided that members are given at least two months' prior notice.
- (e) A member who ceases to be a member before any fee becomes due and payable shall not be liable for that fee.

6.6 Resignation of membership

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

6.7 Termination of membership

Membership shall cease and the Secretary may remove the member's name from the Register when any one of the following has occurred:

- (a) the member becomes bankrupt or insolvent or makes any composition with their creditors.
- (b) the Board has passed a resolution expelling a member under rule 6.8.
- (c) the member has failed to pay any fees payable by the end of 90 days from the due date of such fee (unless the Board permits such member's name to remain upon the register);
- (d) a written resignation from the member has been received by the Secretary; or
- (e) becomes, if the Board in its discretion decides, an untraceable member.

6.8 Suspension and expulsion of members

- (a) The Board may resolve to:
 - (1) expel a member who is not a Director from the AGIC; or
 - (2) suspend a member who is not a Director from such rights and privileges of membership of the AGIC as the Directors may determine for a specified period

if, in their absolute discretion, they decide it is not in the interests of the AGIC for the person to remain a member.
- (b) If the Board intends to consider a resolution under rule 6.8(a), at least one week before the meeting at which the resolution is to be considered, they must give the member written notice:
 - (1) stating the date, place and time of the meeting;
 - (2) setting out the intended resolution and the grounds on which it is based; and
 - (3) informing the member that he or she may attend the meeting and may give an oral or written explanation or submission before the resolution is put to vote. The member may not attend the meeting when the resolution is put to and considered by the Board.
 - (4)

6.9 Right of appeal of disciplined member

- (a) A member may appeal to the AGIC in general meeting against a resolution of the directors of AGIC which is made under rule 6.8 (3), by giving the Secretary written notice no later than 7 days after notice of the resolution is served on the member.
- (b) On receipt of a notice under subrule (1), the Secretary shall notify the Board which shall convene a general meeting of the AGIC to be held within 40 days after the date on which the secretary received the notice or as soon as possible after that date.
- (c) At a general meeting of the AGIC convened under subrule (2)—
 - (1) no business other than the question of the appeal shall be transacted; and

- (2) the Board and the member shall be given the opportunity to make representations in relation to the appeal orally or in writing, or both; and
- (3) the members present shall vote by secret ballot on the question of whether the resolution made under rule 6.8 (4) should be confirmed or revoked.
- (d) If the meeting passes a special resolution in favour of the confirmation of the determination of the Board made under rule 6.8 (4), that resolution is confirmed.

6.10 Effect of termination on fees due and payable

Subject to rule 6.5(e), resignation or other termination of a member's membership of the AGIC will not relieve a member of responsibility for any financial obligations, including in respect of payment of fees and other amounts dues and payable, accrued up to the effective date of cessation of membership.

7. GENERAL MEETINGS

7.1 Power to convene

- (a) An annual general meeting shall be convened in accordance with a member's requisition under the Act, or as and when the Board see fit, or as otherwise provided in the Act.
- (b) The Board may change the venue for, postpone or cancel a general meeting, unless the meeting is called and arranged to be held by requisitions of the members of The Court under the Act in which case the Board may not:
 - (1) postpone it beyond the date by which section 249D requires it to be held; or
 - (2) otherwise postpone or cancel it without the consent of the persons who called or requisitioned the meeting.

7.2 Notice of general meetings

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

7.3 Business of general meetings

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

7.4 Quorum

- (a) A quorum for a General Meeting shall be constituted by Members Present and entitled to vote representing not less than 10% of the total number of members of the AGIC.
- (b) A contemporaneous linking together by telephone or other electronic means (enabling a person to participate at the meeting) of a sufficient number of members in person to constitute a quorum constitutes a meeting of the members.

7.5 If quorum not present

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

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

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

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

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

7.7 *Chairperson of general meetings*

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

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

7.8 *Adjournments*

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

7.9 *Voting at general meetings*

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

7.10 *Procedure for polls*

- (a) Subject to this rule, a poll when demanded in accordance with this Constitution shall be taken in the manner and at the time the chairperson directs.

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

7.11 Decisions at general meetings

- (a) Except where by law or this constitution a resolution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the members present at the meeting entitled to vote. Such a decision is for all purposes a decision of the members.
- (b) In the event of an equality of votes on a show of hand or on a poll the chairperson of the meeting shall not have a casting vote in addition to any vote to which the chairperson may be entitled as a proxy or representative of a member and the proposed resolution will be taken as lost.

7.12 Representation and voting of members

- (a) Members shall have the right to attend and vote at meetings of members, provided they have paid all fees due and payable at the date of the notice of meeting on or before the date of the meeting. Any objection to the qualification of a person to vote at a meeting of members must be raised with the chairperson before or at the meeting at which the vote is to be taken (but in any case before the vote is called for) and the decision of the chairperson on that objection is final.
- (b) Subject to this Constitution:
 - (1) at meetings of members each member entitled to attend and vote may attend and vote in person or if a body corporate by its representatives, or by proxy;
 - (2) on a show of hands, every Member Present having the right to vote at the meeting has one vote; and
 - (3) on a poll, every Member Present having the right to vote at the meeting has one vote.
- (c) Natural Persons who are members will not have an entitlement to vote at meetings of members.

7.13 Proxies

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

7.14 Right of officers and advisers to attend general meeting

- (a) A Director shall be entitled to be present and to speak at any general meeting.
- (b) An auditor shall be entitled to be present and to speak at any general meeting.

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

7.15 *Circulating resolutions*

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

8. DIRECTORS

8.1 *Interpretation*

In this rule 8:

“**Chief Executive**” means any director engaged by the directors under rule 17.1 to perform the office of “Chief Executive”; and

“**Core Directors**” means Directors who are not the Chief Executive.

8.2 *Composition of Board*

The Board shall consist of not less than 5 (five) and not more than 11 (eleven) persons and:

- (a) each of whom must be a resident of Australia;
- (b) who are either a director, senior executive officer or employee of a business organisation involved in infrastructure projects in Australia including:
 - (1) contractors;
 - (2) project design consultants;
 - (3) project managers;
 - (4) infrastructure project owners;
 - (4a) infrastructure financiers;
 - (5) infrastructure project operators; or
 - (6) any other organisation that provides services to infrastructure project; and
- (c) shall, in all cases and at any time, not consist of such number of Directors being representatives of members from the same organisation type, that is greater than one-third of the total number of Directors then in office (rounded up to the nearest whole number).

8.3 *Director Candidate List*

- (a) The Board shall call, at least 45 days prior to any Annual General Meeting at which it is proposed that Directors will be elected, for nominations of persons for election as Directors from the members. The Board shall prepare a list of persons from whom nominations for appointment as directors at any general meeting of the company, have been received (the “Director Candidate List”). Each person included on the list must have signed a consent to act as a Director and supplied any other information required by the Board, unless the Directors resolve otherwise, within 30 days prior to any such Annual General Meeting.
- (b) The Director Candidate List shall be sent to each member together, subject to rule 8.4, with a ballot paper with notice of the Annual General Meeting if the election of Directors is proposed to occur at that meeting.

8.4 *Election of Directors by members*

- (a) Subject to this rule 8.4, and rule 8.5, every candidate for Director shall be elected to office by resolution of members or by ballot of such members, held at each annual general meeting.

- (b) In the event that more candidates have nominated than vacancies exist on the Board, the election of Directors shall take place by way of a resolution of members or by ballot, as determined by the Board. Subject to rule 8.2(b), in any other case, the nomination of persons under rule 8.3 shall operate as an election of those persons nominated, effective from the close of the immediately next annual general meeting.
- (c) There shall be no election of Directors held until the first Annual General Meeting after the first anniversary of the date of registration of the company.

8.5 Appointment of Directors by the Board

Subject to the Act and this Constitution, the Board may at any time appoint any person as a Director, to fill a casual vacancy, provided that if the vacancy shall be in respect of a Director representing a Membership Group the appointment shall be made after consultation with that Membership group.

- (a) Unless the number of Directors is or would be less than the minimum number provided by rule 8.2, no casual vacancy is to be filled within 3 (three) months prior to the company's next annual general meeting.

8.6 Term of Directors elected to fill casual vacancy

A person elected to fill a casual vacancy remains in office until the next annual general meeting. Subject to this rule 8, such person may be elected for further terms.

8.7 Removal of Directors

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

8.8 Retirement of Directors

- (a) Subject to rules 8.6 and 8.8, no Director shall hold office for a period in excess of 6 (six) consecutive years, or beyond the sixth annual general meeting following the Director's appointment, whichever is the longer.
- (b) Subject to rule 8.8(g), one-third of the Core Directors, or, if their number is not a multiple of three, then the whole number nearest to and less than one-third of the Core Directors appointed, on or before the first anniversary of the date of registration of the AGIC, less the number of Core Directors who have retired or been removed since the date of registration of the AGIC are to retire at the first Annual General Meeting after that anniversary.
- (c) At each annual general meeting the number of Core Directors necessary to comply with rules 8.8(a) and 8.8(b) are to retire from office.
- (d) Subject to rule 8.8(g), Core Directors to retire under rule 8.8(b) or (c) are to be the Core Directors then longest in office since last being elected or re-elected. Between Core Directors who were elected on the same day, the Core Director or Core Director(s) to retire, if they cannot otherwise agree, must be determined by lot.
- (e) A Director who retires from office after serving 6 (six) consecutive years is eligible for reappointment at the expiration of 12 (twelve) months after such retirement.
- (f) A chairperson of the Board of less than 3 (three) years standing as Chairperson who would otherwise compulsorily retire under rule 8.6 or this rule may seek nomination for an extension of his or her office as Director until a term of no more than 3 (three) years as Chairperson is completed. Such an extension of office shall be approved by both a resolution of the Board voting in a secret ballot at the Board meeting to be held immediately prior to the relevant annual general meeting and by a resolution of members at the relevant annual general meeting also voting in secret ballot.
- (g) Any director holding office as Chief Executive shall not be subject to rules 8.8 (b), (c) or (d).
- (h) Subject to rule 8.8(e), any Director retiring under rule 8.8(b), (c) and (d) shall be eligible for re-election, provided that they may serve not more than 6 (six) consecutive years in office. A retiring Director is eligible for re-election without

needing to give any prior notice of his or her intention to submit himself herself for re-election and acts a Director throughout the meeting at which he or she retires.

8.9 Vacation of office

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

- (a) becomes bankrupt or enters into an assignment for the benefit of creditors;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (c) being a Director nominated by a member, ceases to be affiliated with the member that nominated him or her (unless the Board agrees that the Director may remain a Director until the next Board Meeting);
- (d) resigns by notice in writing to the Secretary or refuses to act;
- (e) is absent without the consent of the Board from 2 (two) consecutive meetings of the Board; or
- (f) dies.

9. POWERS AND DUTIES OF BOARD

9.1 Powers of Board

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

9.2 Appointment of attorneys

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

9.3 Negotiable instruments

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

10. PROCEEDINGS OF BOARD

10.1 Number of Board Meetings

The Board shall meet together for the dispatch of business of the AGIC at least 2 (two) times in each year and shall meet at least one in each 6 (six) consecutive months, and may adjourn and otherwise regulate their meetings as they think fit.

10.2 Convening Board Members

- (a) Any 2 (two) Directors may, at any time, by written notice to the Secretary request that a meeting of the Board be convened. The Secretary shall forthwith convene a meeting in accordance with such a request.
- (b) Unless otherwise agreed by the Directors, at least 7 (seven) days notice must be given to every Director of the place, date and time of every meeting of the Board.

Where any Director is for the time being outside of Australia, notice need only be given to that Director if contact details have been given.

- (c) A notice of meeting of directors must specify the date, time and place for the meeting and need not state the nature of the business to be transacted at the meeting.

10.3 Meetings by technology

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

10.4 Holding of Board Meetings using technology

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

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

10.5 Quorum at meetings

A quorum for a meeting of the Board is not less than half of Directors entitled to vote (rounded up to the nearest whole number if an odd number of Directors are present).

10.6 Chairperson and Deputy-Chairperson

- (a) At their first meeting after the Annual General Meeting in each year the Board shall elect one of their number as their chairperson until the next Annual General Meeting. The Directors may also elect one of their number as Deputy-Chairperson of their meetings and may determine the period for which the person elected Deputy-Chairperson is to hold office.
- (b) Where a meeting of the Board is held and:
 - (1) a Chairperson has not been elected as provided by paragraph (a), or
 - (2) the Chairperson is not present at the time appointed for the holding of the meeting or does not wish to chair the meeting

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

10.7 Proceedings at meetings

- (a) Subject to the Constitution, questions arising at a meeting of the Board shall be decided by a majority of votes of Directors present and voting and any such decision shall for all purposes be taken to be a decision of the Board.
- (b) In the case of an equality of votes, the chairperson of the meeting does not have a second or casting vote in addition to the chairperson's deliberative vote.
- (c) Members are not entitled to attend Board meetings.

10.8 Disclosure of interests

- (a) A Director is not disqualified by the Director's office from contracting with the AGIC in any capacity.
- (b) A contract or arrangement made by the AGIC with a Director or in which a Director is in any way directly or indirectly interested shall not be avoided merely because the Director is a party to or interested in it.
- (c) A Director is not liable to account to the AGIC for any profit derived in respect of a matter in which the Director has a material personal interest, merely because of the Director's office or the fiduciary relationship it entails, if the Director has:
 - (1) declared the Director's interest in the matter prior to or as soon as practicable after the relevant facts have come to the Director's knowledge; and
 - (2) not contravened this Constitution or the Act in relation to the matter.
- (d) A general notice that the Director is an officer or member of a specified body corporate or firm and stating the nature and extent of the Director's interest in the body corporate or firm shall, in relation to a matter involving the AGIC and that body Corporate or firm, be a sufficient declaration of the Director's interest, provided:
 - (1) the extent of that interest is not materially greater at the time of first consideration of the relevant matter by the Board than was stated in the notice; and
 - (2) the Director has complied with section 192 of the Act.
- (e) A Director may not vote in respect of a matter in which that Director has a material personal interest unless the Director is permitted to do so under the Act.
- (f) If the provision of this rule and the Act have been observed by any Director with regard to any contract or arrangement in which the Director is in any way interested, the fact that the Director signed the document evidencing the contract or arrangement shall not in any way affect its validity.

10.9 Alternate Directors

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

10.10 Committees

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

10.11 Written resolutions of Directors

- (a) If a document:

- (1) is sent to all those entitled to receive notice of a meeting at which a resolution could be put;
- (2) contains a statement that the signatories to it are in favour of that resolution;
- (3) the terms of the resolution are set out or identified in the document; and
- (4) has been signed by at least half of the Directors entitled to vote on that resolution as being approved. ,

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

- (b) For the purposes of paragraph (a):
 - (1) “signed” shall include an email from or on behalf of a Director indicating assent to the resolution, provided it reasonably appears to the recipient that the email has been sent by the Director personally or on the Director’s instructions;
 - (2) two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be taken to constitute one document containing a statement in those terms signed by those Directors at the time at which the last of those documents to be signed was signed by a Director; and
 - (3) a fax or email which is received by the AGIC or any agent of the AGIC and is sent by a Director shall be taken to be signed by that Director not later than the time of receipt of the fax or email by the AGIC or its agent in legible form.

10.12 Defects in appointment

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

11. MINUTES

11.1 Minutes to be kept

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

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

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

11.2 Copies of minutes shall be forwarded to the Secretary

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

12. SECRETARIES AND OTHER OFFICERS

12.1 Secretaries

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

12.2 Other officers

- (a) The Board may:
 - (1) create any position in the company with such powers and responsibilities as the Board confers; and
 - (2) appoint any person, whether or not a Director to a position created under paragraph (a)(1).
- (b) The Board may at any time terminate the appointment of a person holding a position created under paragraph (a)(1) and may also abolish the position.

13. SEAL AND EXECUTING DOCUMENTS

- (a) The AGIC shall have a common seal, which shall be used on all documents that at law must be sealed.
- (b) The Seal shall be used only by the authority of the Board, or of a committee of the Board authorised by the Board to authorize the use of the Seal. Every document to which the Seal is affixed shall be signed by:
 - (1) 2 (two) Directors; or
 - (2) a Director and a Secretary.

14. INSPECTION OF RECORDS, ACCOUNTS AND AUDITS

14.1 Inspection of records

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

14.2 Audit

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

15. NOTICES

15.1 Notices generally

- (a) Any member who has not left at or sent to the registered office a place of address, facsimile number or an email address (for registration in the register) at or to which all notices and documents of the AGIC may be served or sent shall not be entitled to receive any notice beyond by display at the registered office.
- (b) A notice may be given by the company to any member by:
 - (1) serving it on the member personally;
 - (2) sending it by post to the member or leaving it at the member's address as shown in the register or the address supplied by the member to the AGIC for the giving of notices;
 - (3) fax to the fax number supplied by the member to the AGIC for the giving of notices; or

- (4) transmitting it electronically to the email address given by the member to the AGIC for the giving of notices.
- (c) Notice to a member whose address for notices is outside Australia shall be sent by airmail, courier, fax or email or any other method which ensures the notice is received within reasonable time.
- (d) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected:
 - (1) in the case of a notice of a meeting, on the day next after the date of its posting; and
 - (2) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (e) Where a notice is sent by fax or electronic transmission, service of the notice shall be taken to be effected by properly addressing and sending or transmitting the notice and to have been effected on the business day after it is sent.

15.2 Notices of general meeting

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

16. INDEMNITY AND INSURANCE

16.1 Indemnification of Directors and Secretary

To the extent permitted by law, the AGIC must indemnify on a full indemnity basis and the full extent permitted by law each person who is, or has been, a Director, Secretary or Executive Officer against any liability incurred as a Director, Secretary or Executive Officer, except where the liability:

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

16.2 Indemnification for legal costs

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

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

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

16.3 Loans or advances for legal costs

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

16.4 Insurance for officers and auditor

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

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

16.5 Limitation on company's obligation to indemnify

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

16.6 Company may enter into document for indemnity and insurance policy

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

- (a) documentary indemnity in favour of; or
 - (b) insurance policy for the benefit of,
- a person who is, or has been, a Director, Secretary, employee or other officer of the AGIC.

16.7 Term of Indemnity

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

17. CHIEF EXECUTIVE

17.1 Appointment

- (a) **(Engagement):** The Board may at any time engage a person who is to service as a Director and perform the office of Chief Executive for any period and on any provisions decided by the Board.
- (b) **(Revocation):** The Board may at any time revoke any engagement of the Chief Executive, subject to the provisions of any applicable engagement agreement.
- (c) **(Termination):** The Chief Executive shall cease automatically to be a Director, in the event that the Chief Executive ceases to be employed as Chief Executive for any reason.

17.2 Remuneration

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

17.3 Powers

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